the teares of an engliſh hart. And his ſoden arryuall here with all the maner and circumſtances thereof would yeelde nevve argumẽts of an other much lõger diſcourſe. For fitſt his cõming hither as it vver in a maſke, bewraies a ſtrange melancholik nature in himſelf: who delights to make all his iourneis in ſuch ſullẽ ſolitary ſort, & therfore belike an ill companion to liue withall in any ſelovvſhip. Then yt ſhewes his extreeme want of abilitie to defray the expence of woeng in a bountiful ſhew fitting ſuch a prince as cõmeth to obtein out Queen. This his ſecrete comming & departing, diſcouers a miſtruſtfulnes in him towards our people, and therefore no loue, which muſt needs come frõ his own ill conſcience of fearing french meaſure in England. for on our part (the Lord be thanked) we haue not committed ſuch villenies. all men deeme him vnworthy to ſpeed who comes in a net as though he were loath to auow his errand. Some men may think he is aſhamed to ſhevv his face, but I think verely that he meanes not ſincerely who loues not light & wil not com abroade. The laſt noble princely gentlemã that went out of Englãd to vvin a Queen in france gaue trial & ſhew of vviſdome, manhod, behauiour, and perſonage, by open cõuerſatiõ & performing al maner of knightly excerciſes: which makes vs in England to find very ſtrange, this vnmanlike, vnprincelike, ſecrete, fearful, ſuſpitious, diſdainful, needy french kind of woeng in Monſieur, & we can not chuſe but by the ſame ſtil, as by all the other former demonſtratife remonſtrãces, conclude, that thys french mariage, is the ſtreighteſt line that can be dravvne frõ Rome to the vtter ruine of our church: & the very righteſt perpendicular downfal that can be imagined frõ the point france to our Engliſh ſtate: fetching in vvithin one circle of lamentable fall the royal eſtate of our noble Queen, of hir perſon, nobility, and commons. vvhoſe Chriſtian honorable, healthful, ioyful, peaceful, and long, ſouereigne raigne without all ſuperior ouerruling commander, eſpecially french, namely Monſieur, the king of kings hold on, to his glory and hyr aſſurance of true glory in that other kingdom of heauen. Amen

Amen. Amen.

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Amen. Amen.

A TREATISE

TOVCHING THE RIGHT, TITLE, AND INTEREST OF the mightie and noble Princesse Marie, Queene of *Scotland, to the succession of the Croune of England.*

Made by Morgan Philippes, Bachelar of Diuinitie, assisted vvith the aduise of Antonie Broune Knight, one of the Iustices of the Common Place.

An. 1567.

BIBLIOTHECA BODLEIANA

LEODII.

Apud Gualterum Morberium.

1571.

A 8 67.

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TOVCHING THE RIGHT, TITLE AND INTEREST OF the mightie and noble Princeſſe Marie, Queene of *Scotland, to the ſucceſſion of the Crowne of England.*

The Second Booke.

THE great prouidence, good Reader, of the eternal God, who of nothing created all thinges, did not only create the ſame by his ineffable power, but by the ſame power gaue a ſpecial gifte and grace alſo to euery liuing thing, to continue, to renewe, and to preſerue eche his owne kinde. But in this conſideration the condition of man among and aboue al earthly thinges hath his peareleſſe prerogatiue of wit and reaſon, wherewith he only is of God gratiouſly endewed and adorned: by the which he doth prouide not only for his preſente neceſsitie and ſauegard (as do alſo naturally after their ſorte al beaſtes, and al other liuing thinges voide of reaſon) but alſo by the pregnancie

Man only hath the pierogatiue of wyt and reaſon among al earthlye creatures.

of wit, and reaſonable diſcourſe doth long afore forſee the dangerous perils that many yeres after may happen, either to himſelf, or to his Countrey: and then by diligence and careful prouiſion doth inuent apte and mete remedies for the eſchewing of ſuche miſchieffes, as might outragiouſly afterwarde occurre. And the greater the feare is of greater miſchief: the greater, the deper, and the ſpeedier care is wont to be taken, to preuent and cut of the the ſame.

Men are moſt boūd to the preſeruation of their Coūtrey.

It is alſo moſt certaine by the confeſsion of al the world, that this care is principally dew, by eche man that hath opportunitie to do good therin, to his Prince, his Countrey, and to the common Weale and good quiet of the Countrey, for the continuance and happie preſeruation of the ſame. To the preſeruation whereof, as there are many partes and branches belonging: ſo one principal part is for Subiectes, louingly and reuerently to honour, dreade, and obediently to ſerue their Souereigne, that chaunceth preſently to rule and gouerne. The next, to foreknow, to whome they ſhould beare their allegeance, after the deceaſſe of their foreſaid Prince and Gouernour.

A great cō moditie to the cōmō vvealth, to knovv the heire appa rente.

Which

Which being once certaine aud aſſuredly knowen, as it procureth, when the time requireth, readie and ſeruiceable obedience, with the great comfort and vniuerſal reaſt and quietnes of the Subiectes: ſo where for the ſaid Succeſſour there is among them diſcord and diuerſitie of iudgementes: the matter groweth to faction, and from faction to plaine hoſtilitie, and from hoſtilitie to the daunger of many mens liues, and many times to the vtter ſubuerſion of the whole ſtate.

For the better auoiding of ſuche and the like inconueniences (albeit at the beginninge Princes reigned not by deſcente of blood and ſucceſsion, but by choyce and election of the worthieſte) the worlde was for the moſte parte conſtrained, to repudiate election, and ſo often times for the better and the worthier to take a certain iſſue and offſpringe of ſome one onely perſone, though otherwiſe perchaunce not ſo mete. Which defecte is ſo ſupplied, partely by the great benefit of the vniuerſal reſt and quietnes that the people enioy thereby, and partly by the graue and ſage Counſaylours to Princes: that the whole worlde in a manner

Why all the vvorld almoſt doth embrace ſucceſsion of Princes rather then election.

these many thousand yeares hath embraced succession by blood, rather then election. And politike Princes, whiche haue had no children of their owne to succede them, haue had euer a speeial care and foresight thereof for auoiding of ciuil discention. So that the people might alwaies knowe the true and certaine Heire apparent, chiefly, where there appeared any likelyhod of varietie of opinions or faction to ensewe about the true and lawful succession in gouernement.

This care and foresight doth manifestly appeare to haue bene not onely in many Princes of foraine Countreies, but also of this Realme, as wel before the tyme of the Conqueste, as also after, namely in Kinge Edwarde the Confessour, in declaring and appointing Eadgare Atheling his nephewes sonne his heire, as also in King Richard the first, who before he interprised his Iourney to Hierusalem (where for his chiualrie he atchiued high honour) declared by consent of his Nobilitie and Cõmous, Arthur sonne of his brother Duke of Britaine, his next heire in succession of the Crowne. Of the whiche Arthur, as also of the said Eadgare Atheling

Flores histor. anno 1057.

Richardus Canonicus sanctæ Trinit. Lond. Flor. histo. anno 1190. Polid. li. 14

Atheling we wil ſpeake more hereafter.

This care alſo had King Richard the ſecond, what time by authoritie of Parlament he declared the Lorde Edmond Mortymer, that maried Philippe dawghter and heire to his Vncle Leonel Duke of Clarence, heire apparente. And to deſcende to later times, our late Noble Souereigne King Henry the eyght ſhewed, as it is knowen, his prudente and zealous care in this behalf before his laſt noble voiage into Fraunce. *Polid li. 20*

And now, if God ſhould (as we be al, as wel Princes, as others, ſubiect to mortall chaunces) once bereaue vs of the preſent Gouernour, the hartes and iudgementes of men being no better, nor more firmely ſetled and fixed towards the expectation of a certaine ſucceſsion, then they ſeme now to be: then wo and alas: it yrketh my verie harte, euen onſe to thincke vpon the imminente and almoſt the ineuitable daunger of this our noble Realme, beinge like to be ouerwhelmed with the raging and roring waues of mutual diſcorde, and to be conſumed with the terrible fier of ciuil diſcẽtion.

The feare whereof is the more, by reaſon already in theſe later yeares ſome flames

thereof haue ſparkled and fluſſhed abrode, and ſome parte of the rage of the ſayd fluddes haue already beaten vpō the bankes. I meane the hot contention, that hath bene therein in ſo many places, and among ſo many perſons: of bookes alſo, that haue bene ſpread abrode, and daily are ſpread, being framed affectionately, and ſounding according to the ſiniſter opinion of euery mans priuate appetite.

Seing therefore, that there is iuſt cauſe of feare and of great danger likely to happen by this varietie of mens iudgementes ſo diuerſely affected, as wel of meane men, as of greate perſonages: I take it the parte of euery true Engliſhman, to labour ad trauaile eche man for his poſsibilitie, and for ſuche talente, as God hath geuen him, to helpe in conuenient tyme for the preuenting of the imminent daunger. We knowe, what wit, what policie, what paines, what charges menne imploie, to prouide, that the Temmes or ſea doo not ouerflowe ſuch places, as be moſte ſubiecte to daunger. We knowe, what politike prouiſion is made in many good Cities and townes, both to foreſee, that by negligence there ryſe no dangerouſe

gerouſe fiers, and yf they chaunce, with al diligence to repreſſe the rage thereof. Wherein among other his prudente dooinges Auguſtus the Emperour is commended, for appointing at Rome ſeuen companies ordinarily to watche the Citie, for the purpoſe aforeſaide. Wherevnto he was enduced, by reaſon the Citie was in one daye in ſeuen ſeuerall places ſette on fier. And ſhal not we euery man for his his parte and vocation, haue a vigilant care and reſpecte, to the extinguiſhement of this fier already ſprong out, that may (if the matter be not wiſely foreſeen) deſtroie, ſubuert and conſume, not one Citie onely, but importe an vniuerſall calamitie and deſtruction?

Which to repreſſe, one ready and good way ſeemeth vnto me, if men may knowe and be throughly perſuaded, in what perſon the right of the ſucceſsion of the Croune of this our Realme doth ſtande and remaine. For now many men through ignorance of the ſaid Right and Title, and alſo the ſame being depraued by certaine ſiniſter perſuaſions in ſome bookes, wherevnto they haue to lightly geuen creditte, be caried

away

away from the right opinion and good hart, that they otherwiſe would and ſhould haue.

The whiche kind of men I doo hartely wiſhe from their ſaid corrupte iudgemente to be reuoked: and ſhal in this Treatiſe doo my beſte indeuour, to remoue, not preſuming vpon my ſelf, that I am any thing better able, then others, this to do (for I knowe my owne infirmitie) but being glad and willing, to impart vnto others ſuch motiues, as vpon the reading of ſuch bookes, which of late haue ben ſet forth by the Aduerſaries, and after the diligent weying of diuers argumentes to the contrarie, ſeeme vnto me ſufficient to ſatisfie any honeſt and indifferent man, that is not obſtinately bent to his owne wilfull affections, or to ſome other ſiniſter meaning and dealing.

We ſay then and affirme, that the right Heire and Succeſſour apparent vnto the Croune of this Realme of England, is at this time ſuch a one, as for the excellent giftes of God and nature in her moſt princely appearing, is worthie to inherit either this noble Realm, or any other, be it of much more dignitie and worthines.

But nowe I claime nothing, for the wor-

thines

thines of the perſon, whiche God forbid ſhould be any thing preiudiciall to the iuſte title of others. Yf moſt open and manifeſte right, iuſtice and title do not concurre with the worthines of the perſon: then let the praiſe and worthines remaine where it is, and the right where God and the lawe hath placed it.

But ſeing God, Nature and the law doth call the perſon to this expectation, whoſe intereſt and claime I do now proſequute (I meane the right excellẽt Ladie, Ladie Marie Queene of Scotlande) I hope, that when her right and iuſte title ſhalbe throughly heard and cõſidered by the indifferent Reader, if he be perſuaded already for her right, he ſhalbe more firmely ſetled in his true and good opinion, and that the other parties, being of a contrarie minde, ſhall finde good cauſes and groundes, to remoue them from the ſame, and to geue ouer and yelde to the truthe.

The Quene of Scottes is right heire apparent to the Croune of Englande.

Her Graces Title then, as it is moſte open and euidente, ſo it is moſte conformable to the lawe of God, of Nature, and of this Realme: And cõſequently in a manner of all other Realmes in the worlde, as

growing

growing by the neareſt proximitie of the Roial blood. She is a Kinges and a Queenes daughter, her ſelfe a Queene, daughter to the late King Iames of Scotlande, ſonne to Ladie Margarete the eldeſt Syſter to our late Soueraigne Kyng Henrie the Eight. Whoſe daughter alſo the Ladie Lenoux is, but by a later huſbande: the Ladie Frauncis, late wife to Henrie Marques Dorſette, afterwarde Duke of Suffolke: and the Ladie Elenour, late wife to the Earle of Cumberlande, and their Progenie proceedeth from the Ladie Marie, Dowager of France, yongeſt Siſter of the ſaid King Henrie, late wife to Charles Brandon Duke of Suffolke.

I might here fetche foorth olde farne dayes. I might reache backe to the noble and worthie Kinges long before the Conqueſt, of whoſe Roial blood ſhe is deſcended. Whiche is no parte of our purpoſe, neither doth enforce her Title more then to prooue her no ſtranger within this Realme. But the Argumentes and prouffes, which we meane to alleage and bring forth for the confirmation of her right and Title in Succeſsion(as Heire apparent)to the

Croune

Croune of England, are gathered and grou-ded vpon the lawes of God and nature, and not only receaued in the Ciuill policies of other nations, but also in the olde lawes and Customes of our owne Countrey, by reason approued, and by vsage and long continuance of time obserued, from the first constitution of this Realme in politicall order vnto this present day.

And yet for al that hath it bene, and yet is, by some men attempted, artificially to obiecte and caste many mystie darke cloudes before mennes eyes, to kepe from them (if it may be) the cleare light of the said iust title, the which they would extinguish, or at the least blemish with some obscure shadow of lawe, but in deede against the lawe, and with the shadowe of Parlamentes, but in deede against the true meaning of the Parlamentes.

And albe it, it were inough for vs (our cause being so firmely and suerly establisshed vppon al good reason and lawe) to stande at defence, and onely to auoide (as easely we may) their obiections, which principally and chiefly are grounded vpon the common lawes and Statutes of this Realme:

yet

yet for the bettering and ſtrengthening of the ſame, we ſhal lay forth ſundrie great and inuincible reaſons, cõioyned with good and ſufficient authoritie of the law, ſo approued and confirmed, that the Aduerſaries ſhal neuer be able iuſtly to impugne them. And ſo that we truſt, after the reading of this Treatiſe, and the effectes of the ſame wel digeſted, no maner of ſcruple ought to remaine in any indifferent mans hart, concerning her right and Title.

Whoſe expectation and conſcience although we truſte fully in this Diſcourſe to ſatisfie, and doubt nothing in the worlde of the righteouſnes of our cauſe: yet muſt we nedes confeſſe, the manner and forme to entreate therof to be ful of difficultie and perplexity. For ſuch cauſes of Princes, as they be ſeldome and rare, ſo is it more rare and ſtrange, to finde them diſcourſed, diſcuſſed and determined by any lawe or ſtatute, albe it nowe and then ſome ſtatutes tende that waye. Neither do our lawes, nor the Corps of the Romaine and Ciuil law lightly meddle with the princelie gouernement, but with priuate mens cauſes.

Inſt. de iuſt. & iure §. fin.

And yet this notwithſtanding, for the better

better iuſtification of our cauſe, albe it I denie not, but that by the cõmon law it muſte be knowẽ, who ought to haue the Croune, and that the common lawe muſte diſcerne the right, aſwel of the Croune, as of ſubiectes: yet I ſaye, that there is a greate difference betwene the Kings right, and the right of others: And that the Title of the Croune of this Realme is not ſubiect to the rules and principles of the common lawe of this Realme, as to be ruled and tryed after ſuch order and courſe, as the inheritance of priuate perſons is by the ſame. For the prouf whereof let vs conſider, what the common lawe of this Realme is, and how the rules thereof be grounded and do take place.

The common lavve of this Realme is rather grounded vpon a general cuſtom, then any lavve vvritten.

It is very manifeſte and plaine, that the common lawe of this Realme of England is no law writtẽ, but grounded only vpon a common and generall cuſtome throughout the whole realme, as appeareth by the Treatiſe of the auncient and famous Writer of the lawes of the realme named *Ranulphus de Glanuilla*, who wrote in the time of the noble King Henrie the ſecond, of the law and Cuſtome of the realme of England: being then, and alſo in the time of the raigne of

In Prologo ſuo eiuſdem li. fo. 1. et 2. De dict. Ranulpho Glãuilla vide Giraldum Cambren. in topogra. de Wallia.

King

King Richarde the firſte, the chiefe Counſailour and Iuſtice of the ſame King, and alſo by the famouſe Iuſtice Forteſcue in his booke whiche he wrote being Chauncellour of England *De laudibus Legum Angliæ*. And by *33. H. 6. 51.* and by *E. 4. 19.* Whiche Cuſtome by vſage and continuall practiſe heretofore had in the Kinges Courts within this Realme is only knowen and maintei-ned: wherein we ſeeme much agreable to the olde Lacedemonians, who many hundred yeres paſt moſt politikely and famouſly gouerned their common Wealth with lawe vnwritten: whereas among the Athenians the writen lawes bare al the ſway.

Forteſcue *de lau. Leg. Angl. c. 17.* 8. E. 4. 19. 33. H. 6. 51. Pinſons printe.

Inſt. de iure natura. gẽt. & ciuil. §. ex non ſcript.

This thing being ſo true, that with any reaſon or good authoritie it can not be denied: then we are farther to conſider, whether the Kinges Title to the Croune can be examined, tried and ordered by this common Cuſtome, or no. Yf ye ſay it may: then muſt ye proue by ſome recorde, that it hath bene ſo vſed: otherwiſe ye only ſay it, and nothing at all proue it. For nothing can be ſaid by lawe to be ſubiecte to any cuſtome, vnleſſe the ſame hath ben vſed accordingly, and by force of the ſame cuſtom.

I am

I am wel aſſured, that you are not able to proue the vſage and practiſe thereof by any record in any of the Kings courts. Yea I wil farther ſay vnto you, and alſo proue it, that there is no one rule general or ſpecial of the common lawe of this Realme, which ye either haue ſhewed, or can ſhewe, that hath bene taken by any iuſte conſtruction to extende vnto, or bind the King or his Croune. I wil not denie, but that to declare and ſet forth the prerogatiue and Iuriſdictiō of the King, ye may ſhewe many rules of the lawe, but to binde him (as I haue ſayde) ye can ſhewe none.

The Aduerſaries haue ſhewed no rule of the cōmon lawe that bindeth the Croune.

Ye ſay in your booke, that it is a Maxime in our lawe moſt manifeſt, that who ſo euer is borne out of England, and of father and mother not being of the obedience of the King of England, can not be capable to inherite any thing in England. Whiche rule being general, without any wordes of exception, ye alſo ſay, muſt nedes extende vnto the Croune. What you meane by your law, I knowe not. But if you meane (as I thinke you do) the common lawe of England: I anſwere, there is no ſuch Maxime in the common lawe of this Realme of Englande, as

hereafter I ſhal manifeſtly proue.

But if it were for argumentes ſake admitted for this time, that it be a Maxime or general rule of the cõmon law of England: yet to ſay, that it is ſo general, as that no exception can be taken againſt the ſame rule, ye ſhewe your ſelfe either ignorant, or els very careleſſe of your creditte. For it doth plainely appeare by the Statute of 25. E.3. (being a declaration of that rule of the Lawe, whiche I ſuppoſe ye meane, terming it a Maxime) that that rule extendeth not vnto the Kinges children.

25.E.3.

Whereby it moſte euidently appeareth, that it extendeth not generally to al. And if it extende not to binde the Kinges children in reſpect of any inheritance deſcended vnto them from any of their Aunceſtours: it is an Argument *à fortiori*, that it doth not extende to binde the King or his Croune.

And for a ful and ſhort anſwere to your Authorities ſette foorth in your marginall Notes, as *5. Edward. 3. tit. Ayle. 13. Edwar. 3. tit. Bref. 31. Edw. 3. tit Coſon. 42. Edwar. 3. fol. 2. 22. Henric. 6. fol. 42. 11. Henric. 4. fol. 23. & 24. Littleton. ca. vilenage*: it may plainly appeare

vnto

vnto all, that will reade and pervſe thoſe Bookes, that there is none of them al, that doth ſo much as with a peece of a word, or by any colour or ſhadow ſeeme to intende, that the Title of the Croune is bounde by that your ſuppoſed general rule or Maxime. For euerie one of the ſaid Caſes argued and noted in the ſaid Booke, are onely concerning the diſhabilitie of an Alien borne, and not Denizon, to demaunde any landes by the lawes of the Realme by ſuite and action onely, as a ſubiect vnder the King, and nothing touching any diſhabilitie to be laied to the King himſelfe, or to his ſubiectes.

The aduerſaries caſe pertaineth to ſubiects only.

Is there any controuerſie about the Title of the Croune, by reaſon of any ſuch diſhabilitie touched in any of theſe Bookes? No verely, not one worlde, I dare boldely ſay. As it may moſt manifeſtly appeare to them, that wil reade and pervſe thoſe bookes. And yet ye are not aſhamed, to note them as ſufficient authorities for the maintenance of your euil purpoſe and intēt. But as ye would ſeeme to vnderſtand, that your rule of diſhabilitie is a general Maxime of the law: ſo me thinketh ye ſhould not be ignorant, that it is alſo as general, yea a more general rule and

No Maxime of the lawe bindeth the Croune, vnles the Croune ſpecially be named.

Maxime of the lawe, that no Maxime or rule of the lawe can extende, to binde the King or the Croune, vnleſſe the ſame be ſpecially mentioned therein, as may appeare by diuerſe principles and rules of the lawe, which be as general, as is your ſayd ſuppoſed Maxime, and yet neither the King, nor the Croune is by any of them bound.

1. Of the Tenante by the curteſy

As for example: it is very plaine, that the rule of the Tenante by the Curteſie is general without any exception at al. And yet the ſame bindeth not the Croune, neither doth extende to geue any benefitte to him that ſhal marie the Queene of England. As it was plainely agreed by all the lawiers of this Realme, when King Philippe was married vnto Queene Marie, although for the more ſuertie and plaine declaration of the intentes of King Philippe and Queene Marie, and of al the ſtates of this realme, it was enacted, that King Philip ſhould not claime any Tytle to be Tenaunt by the Curteſie.

2. Nor that the landes ſhalbe diuided among the daughters.

It is alſo a general rule, that if a man dye ſeaſed of any landes in Fee ſimple without iſſue male, hauing diuerſe daughters: the lande ſhallbe equally diuided amonge the daughters. Which rule the learned men in

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the lawes of this Realme agreed vpō in the lyfe of the late noble Prince Edwarde, and alſo euery reaſonable mā knoweth by vſage to take no place in the ſucceſsion of the Croune. For there the eldeſt enioyeth al, as though ſhe were iſſue male.

3.

Likewiſe it is a general rule, that the wife after the deceaſe of her huſband, ſhalbe endowed and haue the thirde parte of the beſt poſſeſsions of her huſband. And yet it is very clere, that any Queene ſhal not haue the thirde parte of the landes belonging to the Croune, as appeareth *in 5.E.3. Tit. prærogat. 21.E.3.9.& 28.H.6.* and diuers other bookes.

Nor the vvife ſhall haue the third part.

5.E.3. Tit. prærog.21. E.3.9. & 28.H.6.

Byſides that, the rule of *Poſſeſsio fratris*, beinge generall, neither hath bene, or can be ſtretched to the inheritance of the Croune. For the brother of the half blood ſhal ſuccede, and not the ſiſter of the whole blood, as may appeare by Iuſtice Moile, as may be proued by King Etheldred brother and ſucceſſor to King Edward the Martyr, and by King Edwarde the Confeſſour, brother to King Edmunde, and diuers other, who ſucceded in the Croune of England, being but of the halfe blood. As was alſo the late Queene Marie, and is at this preſente her

Nor the rule of *Poſſeſsio fratris* &c.

ſiſter. who both in al recordes of our lawe, wherein their ſeueral rightes and titles to the Croune are pleaded (as by daily experience, aſwell in the Exchequer, as alſo in all other Courtes is manifeſt) doe make their conueiance as heires in blood th'one to the other, which if they were cõmon or priuate perſons, they could not be allowed in lawe, they (as is wel knowen) being of the halfe blood one to the other, that is to wit, begotten of one father, but borne of ſundrie mothers.

5. It is alſo a general rule in the lawe, that the executour ſhal haue the good and Chattles of the teſtatour, and not the heire. And yet is it otherwiſe in the caſe of the Croune. For there the ſucceſſour ſhal haue them, and not the executour, as appeareth in 7. H. 4. by Gaſcoine. It is likewiſe a general rule, that a man attainted of felony or treaſon, his heire through the corruption of blood without pardon and reſtitution of blood, is vnable to take any landes by diſcente. Which rule although it be general, yet it extendeth not to the diſcente or ſucceſsion of the Croune, although the ſame Attainder were by acte of Parlamente, as may appeare by the Attainder

Nor that the executour ſhall haue the goods and Chattles of the teſtatour. 7. H. 4 fol. 42.

Nor that a traitour is vnable to take landes by diſcente and vvithout pardõ.

der of Richarde Duke of Yorke, and King Edward his ſon, and alſo of King Henry the ſeuenth, who were attainted by acte of Parlament, and neuer reſtored, and yet no diſhabilitie thereby vnto Edwarde the fourth, nor vnto Henry the ſeuenth, to receaue the Croune by lawful ſucceſsion.

But to this you would ſeeme to anſwere in your ſaid booke, ſaying, that Hēry the ſeuenth, notwithſtanding his Attainder, came to the Croune, as caſte vpon him by the order of the lawe: forasmuch that when the Croune was caſte vpon him, that diſhabilitie ceaſſed. Wherein ye confeſſe directly, that the Attainder is no diſhabilitie at all to the ſucceſsion of the Croune. For although no diſhabilitie can be alleaged in him, that hath the Croune in poſſeſsion: yet if there were any diſhabilitie in him before to receue and take the ſame by lawful ſucceſsion, then muſt ye ſay, that he was not lawful King, but an vſurper. And therfore in confeſsing Henry the ſeuenth to be a lawful King, and that the Croune was lawfully caſte vppon him, ye confeſſe directly thereby, that before he was Kinge in poſſeſsion, there was no diſhabilitie in him to take the Croune by

lawful ſucceſsiō, his ſaid Attainder notwithſtanding: which is as much as I would wiſh you to graunt.

But in concluſion, vnderſtanding your ſelf, that this your reaſon can not mainteine your intente: you goe about an other way to helpe your ſelf, making a differēce in the lawe betwene the caſe of Attainder, and the caſe of foraine byrth out of the Kinges allegeāce: ſaying, that in the caſe of the Attainder neceſsitie doth enforce the ſucceſsion of the Croune vpon the partie attaynted. For otherwiſe, ye ſay, the Croune ſhall not deſcende to any. But vpon the birth out of the Kinges allegance, ye ſay, it is otherwiſe. And for proufe thereof, ye put a caſe of I.S. being ſeaſed of landes, and hauing iſſue A. and B. A. is attainted in the life of I.S. his father, and after I.S. dieth, A. liuing vnreſtored. Nowe the lande ſhal not deſcende either to A. or B. but ſhal goe to the Lorde of the Fee by way of eſchete. Otherwiſe it had ben (ye ſay) if A. had ben borne beyond the ſea, I. S. breaking his allegeāce to the King, and after I. S. cometh agayne into the Realme, and hath iſſue B. and dieth. for now (ye ſay) B. ſhal inherite his fathers Landes.

An anſwere to the Aduerſary making a differēce betwene Attainder ād the birth out of the allegeāce.

Yf the Croune had bene holden of any perſon, to whome it might haue eſcheted, as in your caſe of I.S. the lande did: then peraduenture there had bene ſome affinitie betwene your ſaid caſe, and the caſe of the Croune. But there is no ſuch matter.

Byſides that, ye muſte conſider, that the King cometh to the Croune, not onely by deſcente, but alſo and chiefly by ſucceſsion, as vnto a corporation. And therefore ye might eaſely haue ſene a difference in your caſes betwene the Kinges Maieſtie, and I.S. a ſubiecte: And alſo betwene landes holden of a Lorde aboue, and the Croune holden of no earthly Lorde, but of God almighty onely.

But yet for arguments ſake I would faine knowe, where you finde your differẽce, and what authoritie you can ſhew for the prouf thereof? Ye haue made no marginal note of any authoritie: and therefore vnleſſe ye alſo ſaye, that ye are Pythagoras, I will not beleue your difference. Wel I am aſſured, that I can ſhew you good authoritie to the contrarie, and that there is no difference in your caſes. Perʋſe I praie you 22.H.6. And there may you ſee the opinion of Iuſtice New-

22.H.6. *fol.* 43.

Newton, that there is no difference in your caſes; but that in both your caſes the lande ſhall eſchete vnto the Lorde. And Priſote, being then of Coũſayle with the party that claimed the lands by a deſcent, wher the eldeſt ſonne was borne beyond the ſeas, durſt not abide in law vpon the title. This authoritie is againſt your difference, and this authoritie I am wel aſſured is better, then any that you haue ſhewed to proue your difference. But if we ſhal admitte your difference to be according to the law: yet your caſes, wherevnto you applie your difference, are nothing like, as I haue ſaid before.

But to procede on in the proufe of our purpoſe, as it doth appeare, that neither the King, nor his Croune is bound by theſe generall rules, which before I haue ſhewed: ſo do I likewiſe ſay of al the reſidue of the generall rules and Maximes of the lawe, being in a manner infinite.

The ſuppoſed Maxime of the Aduerſaries touching not Kinges borne beyond the ſea, as ap-

But to retourne againe vnto your onely ſuppoſed Maxime, whiche you make ſo generall, concerning the diſhabilitie of perſons borne beyond the ſeas: it is very plaine, that it was neuer taken, to extende vnto the Croune of this Realme of Englande, as it

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may appeare by King Stephen, and by King Henry the ſeconde, who were both ſtraungers and Frenchemen, and borne out of the Kinges allegeance, and neither were they Kinges children immediate, nor their parentes of the allegeance, and yet they haue bene alwaies accompted lawfull Kinges of England, nor their title was by any man at any time defaced or comptrolled for any ſuch conſideration or exception of foraine birth.

peareth by King Stephen and King H. 2.

And it is a worlde to ſee, how you would ſhifte your handes from the ſaid King Henry. Ye ſay, he came not to the Croune by order of the lawe, but by capitulation, for aſmuch as his mother, by whome he conueied his Title, was then liuing. Well, admitte that he came to the Croune by capitulation, during his mothers life: yet this doth not proue, that he was diſhabled to receaue the Croune, but rather proueth his abilitie. And although I did alſo admit, that he had not the Croune by order of the law during his mothers life: yet after his mothers death, no man hath hitherto doubted, but that he was King by lawful ſucceſsion, and not againſt the lawes and Cuſtomes of this

The Aduerſaries obiection touching King H. 2. auoided.

this Realme. For ſo might you put a doubt in al the Kinges of this Realme, that euer gouerned ſithens, and driue vs to ſeake heires in Scotland, or els where. Whiche thing we ſuppoſe you are ouer wiſe to goe about.

Byſides this, I haue hard ſome of the aduerſaries for farther helpe of their intention in this matter ſaye, that King Henry the ſecond was à Queenes childe, and ſo King by the rule of the commō law. Truely I know, he was an Empereſſe childe, but no Queene of Englandes childe. For although Maude the Empereſſe his mother had a right and a good title to the Croune, and to be Queene of England, yet was ſhe neuer in poſſeſsion, but kepte from the poſſeſsion by King Stephen. And therefore King Henry the ſecond can not iuſtly be ſaied, to be a Queene of Englandes childe, nor yet any Kinges childe, vnleſſe ye would intend the Kinges children by the wordes of *Infantes de Roy &c.* to be children of farther degree, and deſcended from the right line of the King: ſo ye might ſay truely, that he was the child of King Henry the firſt, being in deede the ſonne and heire of Maude the Empereſſe,

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daughter and heire of Kinge Henrie the firſt. Whereby your ſaide rule is here fowly foiled.

And therefore ye would faine, for the maintenance of your pretenſed Maxime, catche ſome holde vppon Arthur the ſonne of Ieffrey, one of the ſonnes of the ſaide Henry the ſeconde Ye ſay then like a good and ioly Antyquarie, that he was reiected from the Croune, bycauſe he was borne out of the Realme. That he was borne out of the Realme, it is very true: but that he was reiected frō the Croune for that cauſe, it is very falſe. Neither haue you any autoritie to proue your vaine opinion in this pointe. For it is to be proued by the Cronicles of this Realme, that King Richarde the firſt, vncle vnto the ſayd Arthur, taking his iourney towarde Hieruſalem, declared the ſaid Arthur (as we haue declared before) to be heire apparent vnto the Croune: whiche would not haue ben, if he had bene taken to be vnhable to receaue the Croune by reaſon of foraine birth.

And although King Iohn did vſurpe, aſwel vpon the ſaide King Richard the firſte his eldeſt brother, as alſo vpon the ſayd Arthur

As touching Arthur King Richardes nephevve. *Vt autem pax iſta, & ſumma dilectio, tā multiplici, quā arctiori vinculo connectatur: prædictis curiæ veſtræ Magnatibus id ex parte veſtra tractātibus Domino diſponente cōdiximus, inter Arthurum egregiū Ducem Britāniæ, nepotē noſtrum & hæredem, ſi forte ſine prole obiret nos contigerit, & filiā veſtrā matrimonium contrahendum &c.*

thur his nephewe: yet that is no prouf, that he was reiected, bycauſe he was borne out of the Realme. Yf ye could proue that, then had you ſhewed ſome reaſon and preſident to proue your intent, whereas hytherto you haue ſhewed none at al, nor I am wel aſſured ſhal neuer be able to ſhewe.

In tractatu pacis inter Richa. 1. & Tancredū Regem Siciliæ. Vide Reg. Houeden. & Richardū Canonicum S. Trinitatis Londin.

Thus may ye ſee, gentle Reader, that neither this pretenſed Maxime of the lawe ſet forth by th'Aduerſaries, nor a great nomber more, as general as this is (whiche before I haue ſhewed) can by any reaſonable meanes be ſtretched, to bind the Croune of Englād. Theſe reaſons and authorities may for this time ſuffice, to proue, that the Croune of this Realme is not ſubiecte to the rules and the Principles of the common lawe, neither can be ruled and tried by the ſame. Whiche thing being true, al the obiectiōs of the Aduerſaries made againſt the title of Marie the Queene of Scotland to the ſucceſsion of the Croune of this Realme, are fully anſwered, and thereby clearly wiped away.

Yet for farther arguments ſake, and to the ende we might haue al matters ſifted to the vttermoſt, and therby al things made plaine: let vs for this tyme ſomewhat yeelde vnto

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the Aduerſaries, admitting, that the Title of the Croune of this Realme were to be examined and tried by the rules and principles of the cõmon law, and then let vs conſider and examin farther, whether ther be any rule of the cõmon law, or els any ſtatute, that by good and iuſt conſtruction can ſeeme to impugne the ſaid title of Marie the Queene of Scotland, or no. For touching her lineal deſcente frõ King Henry the ſeuẽth, and by his eldeſt daughter (as we haue ſhewed) there is no man ſo impudent to denie. What is there then to be obiected among al the rules, Maximes, and iudgements of the cõmon law of this Realm? Only one rule, as a general Maxime, is obiected againſt her. And yet the ſame rule is ſo vntruely ſet forth, that I can not wel agree, that it is any rule or Maxime of the cõmon law of this Realm of Englãd. Your pretẽſed Maxime is, whoſoeuer is born out of the realm of Englãd, and of father and mother not being vnder the obediẽce of the King of England, cannot be capable to inherite any thing in England. Which rule is nothing true, but altogether falſe. For euery ſtranger and Alien is hable to purchace the inheritance of landes within this Realme, as

A falſe Maxime ſet forth by the Aduerſarie.

it may

7.E.4.fo. 28.9.E.4. fo.5.11.H.4 fo 25.14. H.4.fo.10.

it may appeare in 7.& 9.of king Edward the fourth,and alſo in 11.& 14.of king Hẽrie the fourth. And although the ſame purchace is of ſome men accounted to be to the vſe of the King: yet vntil ſuch time as the king be intitled therevnto by matter of Record, the inheritance remaineth in the Alien by the opinion of al men. And ſo is a very Alien capable of inheritance within this Realme. And then it muſt nedes fal out very plainly, that your general Maxime,wherevpon you haue talked and bragged ſo muche, is now become no rule of the common law of this Realme. And if it be ſo:then haue you vttered very many wordes to ſmal purpoſe.

But yet let vs ſee fartther,whether there be any rule or Maxime in the cõmon Law, that may ſeeme any thing like to that rule, wherevppon any matter may be gathered againſt the Title of the ſaid Marie Queene of Scotland. There is one rule of the cõmon Lawe, in wordes ſomewhat like vnto that, whiche hath ben alleaged by the Aduerſaries. Which rule is ſet forth and declared by a ſtatute made anno 25. of King Edward the third. Which ſtatute reciting the doubt that then was, whether infants borne

out of the allegeance of England, ſhould be hable to demaund any heritage within the ſame allegeance, or no: it was by the ſame ſtatute ordeined, that al infantes inheritours, which after that time ſhould be borne out of the allegeance of the King, whoſe father and mother at the time of their birth, were of the feaith and allegeãce of the King of England, ſhould haue and enioy the ſame beneſittes and aduantages, to haue and carie heritage within the ſaid allegeance', as other heires ſhould. Whervpon it is to be gathered by dew and iuſt conſtruction of the ſtatute, and hath bene heretofore cõmonly taken, that the cõmon law alwaies was, and yet is, that no perſon borne out of the allegeãce of the King of England, whoſe father and mother were not of the ſame allegeãce, ſhould be able to haue or demaund any heritage within the ſame allegeance, as heire to any perſon. Which rule I take to be the ſame ſuppoſed Maxime, which the Aduerſaries do meane. But to ſtretch it generally to al inheritances (as the Aduerſaries woulde ſeeme to do) by any reaſonable meanes can not be. For (as I haue ſaid before) euery ſtrãger and Alien borne, may haue and take

the ſtatute of Edvv.3. An.25. toucheth inheritãce, not purchaſe. 11 H.4.fo. 25.

inheritance, as a purchaſer. And if an Alien do marie a woman inheritable, the inheritance therby is both in the Alien, and alſo in his wife, and the Alien thereby a purchaſer. No man doubteth, but that a Denizon may purchaſe landes to his owne vſe: but to inherit landes, as heire to any perſon within the allegeãce of England, he can not by any meanes. So that it ſeemeth very plaine, that the ſaid rule bindeth alſo Denyzõs, and doth only extend to Deſcẽtes of inheritance, and not to the hauing of any landes by purchaſe.

Now wil we then conſider, whether this rule by any reaſonable conſtruction can extende vnto the Lady Marie the Queene of Scotland, for and cõcerning her Title to the Croune of England. It hath bene ſaid by the Aduerſaries, that ſhe was borne in Scotland, which realm is out of the allegeãce of England, her father and mother not being of the ſame allegeance. And therfore by the ſaid rule, ſhe is not inheritable to the Croune of this Realm. Although I might at the beginning very wel and orderly deny the conſequent of your argumẽt: yet for this time we wil firſt examine the Antecedent, whether it be true or no, and then conſider vpon the

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conſequent. That the Queene of Scotland was borne in Scotlād, it muſt nedes be grāted, but that Scotland is out of the allegeāce of Englād, though the ſaid Quene and al her ſubiects of Scotland, wil ſtoutly affirme the ſame: yet ther is a great nūber of men in England, both lerned and others, that be not of that opiniō, being lead and perſuaded therto by diuers hiſtories, Regiſters, Recordes and Inſtruments of Homage, remaining in the treaſurie of this Realm, wherin is metioned, that the Kings of Scotland haue acknowledged the King of Englād to be the ſuperiour Lord ouer the Realme of Scotland, and haue done homage and fealtie for the ſame. Which thing being true (notwithſtanding it be cōmonly denied by al Scotſmen) then by the lawes of this realme Scotlād muſt nedes be accōpted to be within the allegeāce of Englād. And although ſins the time of King Henry the ſixt, none of the Kinges of Scotlande haue done the ſaid ſeruice vnto the Kinges of England: yet that is no reaſon in our lawe, to ſay, that therefore the Realme of Scotland at the time of the birth of the ſaid Ladie Marie Queene of Scotlande, being in the thirtie and fourth yeare of the

Scotland is vvithin the allegeance of Englād.

raigne of our late Souereigne Lorde King Henrie the eight, was out of the allegeance of the kinges of England. For the law of this Realm is very plain, that though the Tenant do not his seruice vnto the Lorde, yet hath not the Lord thereby lost his Seignorie. For the lande still remaineth within his Fee and Seignorie, that notwithstanding.

The Lorde loseth not his seignorie, though the tenāte doth not his seruice

But peraduenture some wil obiecte and say, that by that reason France should likewise be said to be within the allegeance of England: forasmuch as the possession of the Croune of France hath bene within a litle more then the space of one hundred yeares now last past, laufully vested in the kinges of Englād, whose right and title stil remaineth.

To that obiectiō it may be answered, that there is a great difference betwene the right and title, which the Kings of Englād claime to the Realme of Fraunce, and the right and title which they claime to the Realme of Scotlande. Although it be true, that the Kinges of Englande haue bene lawfully possessed of the Croune of France: yet during such time, as they by vsurpation of others are dispossessed of the saide Realme of France, the same Realme by no meanes can

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be ſaid to be within their allegeance: eſpecially conſidering, how that ſyns the time of vſurpation, the people of France haue wholy forſaken their allegeance and ſubiection, which they did owe vnto the Kings of Englande, and haue geuen and ſubmitted them ſelues vnder the obedience and allegeance of the vſurpers. But as for the Realme of Scotlande, it is otherwiſe.

For the Title, whiche the Kinges of England haue claimed vnto the Realme of Scotland, is not in the poſſeſsion of the lande and Croune of Scotlande: but onely vnto the ſeruice of homage and fealtie for the ſame. And although the Kinges of Scotland, ſith the time of King Henry the eight, haue intermitted to doe the ſaid homage and fealtie vnto the Kinges of Englande: yet for al that the Kinges of Scotland can not by any reaſon or lawe be called vſurpers.

And thus may ye ſee, gentle Reader, by the opinion of al indifferente men, not lead by affection, that the Realme of Scotlande hath bene, and is yet within the allegeance and dominion of England. And ſo is the Antecedent or firſt propoſition falſe. And yet that maketh no prouſe, that the Realme of

France likewiſe ſhould nowe be ſaid to be within the allegeance of the Kings of England, by reaſon of the manifeſt and apparent difference before ſhewed.

But what if your Antecedent were true, and that we did agree both with the ſaid Queene of Scotland and her ſubiectes, and alſo with you, that Scotland were out of the allegeance of England? Yet it is very plaine, that your conſequent and concluſion can not by any meanes be true. And that principally for three cauſes, whereof one is, for that neither the King, not the Croune (not being ſpecially mẽtioned in the ſaid rule or pretended Maxime) can be intended to be within the meaning of the ſame Maxime, as we haue before ſufficiently proued by a great number of other ſuche like generall rules and Maximes of the lawes. An other cauſe is, for that the Croune can not be taken to be within the woordes of the ſaid ſuppoſed Maxime: and that for twoo reſpectes: one is, bycauſe the rule doth only diſhable Aliens to demaunde any heritage within the allegeance of England. Whiche rule can not be ſtretched to the demaunde of the Croune of Englãd, which is not within

The cauſes vvhy the Croune cã not be cõpriſed vvithin the pretended Maxime.

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in the allegeance of England: but is the very allegeance it ſelfe. As for a like example: it is true, that al the landes within the Kinges dominion are holdē of the King, either mediatly, or immediately: and yet it is not true, that the Croune (by whiche onely the King hath his Dominion) can be ſaid to be holdē of the King. For without the Croune there can be neither King, nor allegeance. And ſo long as the Croune reſteth onely in demaund, not being veſted in any perſon, ther is no allegeāce at al. So that the Croune can not be ſaid by any meanes to be within the allegeance of England: and therfore not within the wordes of the ſaid rule or Maime. The Title of the Croune is alſo out of the wordes and meaning of the ſame rule in an other reſpect: and that is, bycauſe that rule doth only diſhable an Alien to demaūd landes by deſcent as heire. For it doth not extende vnto landes purchaſed by an Alien, as we haue before ſufficiently proued. And then can not that rule extende vnto the Croune being a thing incorporate, the right wherof doth not deſcend according to the common courſe of priuate inheritance, but goeth by ſucceſsiō, as other corporatiōs do.

Without the croune there can neither be King nor allegeance

No man doubteth, but that a Prior Alien being no denizon, might alwaies in time of peace demaund land in the right of his corporatiō. And ſo likewiſe a Deane or a Perſon being Aliens, and no deniznos, might demaund lande, in reſpecte of their corporations, not withſtāding the ſaid ſuppoſed rule or Maxime, as may appeare by diuerſe booke caſes, as alſo by the ſtatute made in the time of King Richard the ſecond. And although the Croune hath alwaies gone according to the common courſe of a Deſcent: yet doth it not properly deſcende, but ſuccede. And that is the reaſon of the lawe, that although the Kinge be more fauoured in all his doinges, then any common perſon ſhalbe: yet can not the King by lawe auoide his grauntes and Letters Patentes by reaſon of his Nonage, as other infantes may doe, but ſhal alwaies be ſaid to be of ful age in reſpect of his Croune: euen as a Perſon, Vicare or Deane, or any other perſon incorporate ſhalbe. Whiche can not by any meanes be ſaid in lawe, to be within age in reſpect of their corporations, although the corporation be but one yeare olde.

40.E.3.fol. 20.13.E.3. Tit.Bref. 264.16.E. 3.iurans defait.166. 17.E.3. tit. ſcire fac.7.

A Deane, a Perſon, a Priour being an Alien may demande lande in the right of his corporation.

An 3.R.2. 6.C.3.fo. 21.tit.droit 26.lib.Aſſ. p.54.12. li. Aſſ. tit. enfant.13.H 8 fol.14.7.E. 4.fol.10. 16.E.3. iurans defait 9.H. 6.fol. 33.35.H.6. fo.35.5.E.4 fol.70.49. li.Aſſ.A.88 22.H.6.fo. 31.13.H.8. fo.14.

Byſides that, the King can not by the law

auoide

auoide the Letters Patentes made by any vſurper of the Croune (vnleſſe it be by act of Parlament) no more then other perſons incorporate ſhal auoide the grauntes made by one that was before wrongfully in their places and romes: whereas in Deſcentes of inheritance the lawe is otherwiſe. For there the heire may auoide al eſtates made by the diſſeaſour, or abatour, or any other perſon, whoſe eſtate is by lawe defeated. Whereby it doth plainely appeare, that the King is incorporate vnto the Croune, and hath the ſame properly by ſucceſsion, and not by Deſcent onely. And that is likewiſe an other reaſon, to proue, that the King and the Croune can neither be ſaide to be within the wordes, nor yet with in the meaning of the ſaid general rule or Maxime.

The King is alvvaies at ful age in reſpecte of his Croune.

The third and moſt prncipall cauſe of all is, for that in the ſaid ſtatute, whervpon the ſaid ſuppoſed rule or Maxime is gathered, the children deſcendantes and deſcended of the blood royal by the wordes of *Infantes de Roy* are expreſly excepted out of the ſaid ſuppoſed rule or Maxime. Whiche wordes the Aduerſaries do much abuſe, in reſtrainig and conſtruing them, to extende but to the first

The Kings children are expreſlyexcepted from the ſurmiſed Maxime.

firſt degree only: whereas the ſame wordes may very wel beare a more large and ample interpretation: And that for three cauſes and conſiderations.

First by the Ciuil lawe this word *Liberi* (which the worde *Infantes*, being the vſuall and original worde of the ſtatute written in the Frenche tongue, counteruaileth) doth comprehende by proper and peculier ſignification not only the childrē of the firſt degree, but other Deſcendants alſo in the law, ſaying: That he who is manumiſſed or made free, ſhal not commence any Action againſt the children of the Patrone or manumiſſour without licence, not onely the firſt degree, but the other alſo is conteined. The like is, when the lawe of the twelue Tables ſaith: The firſt place and roome of ſucceſsion, after the death of the parentes that die inteſtate, is due to the children, which ſucceſsiō apperteineth as wel to degrees remoued, as to the firſte. Yea in al cauſes fauourable (as ours is) this worde ſon *Filius*, cōteineth the nephew, though not by the propertie of the voice or ſpeache, yet by interpretation admittable in al ſuch thinges, as the law diſpoſeth of. As touching this worde *Infantes*, in

l Liberorū ff. de uerbo rū ſigniſic.

L. Sed & ſi de in ius uocādo inſtit. de hære. ab inteſt.

L. Lucius ff. de hæred. inſtit.

L. Iuſta. & L. Naturū. & L. Liberorum de uerb. ſignif. L. 2. § ſi mater ad S.C. Tertul. L. Filius. de S.C. Maced. L. Senatus de ritu nupt.

Frēch: We ſay, that it reacheth to other Deſcendāts, as wel as the firſt degree. Wherein I do referre me to ſuche as be expert in the ſaid tongue. We haue no one worde (for the barenes of our Engliſh tōgue) to coūterpaiſe the ſaid French word *Infantes*, or the Latin word *Liberi*. Therefore doo we ſupply it, as wel as we may, by this worde children. The Spaniardes alſo vſe this worde *Infantes* in this ample ſorte, when they call the nexte heire to the heire apparēt, *Infant of Spaine*: euen as the late deceaſed Lorde Charles of Auſtrich was called, his father and grandfather then liuing.

L *quod ſi nepotes. ff. teſt. cū nō tatis ibid.*

Infantes in Frenche coūteruaileth this vvorde *liberi* in lat.

Yf then the original word of the ſtatute, declaring the ſaid rule, may naturally and properly apperteine to al the Deſcendants: why ſhould we ſtraine and binde it to the firſt degree only, otherwiſe then the nature of the worde or reaſon wil beare? For I ſuppoſe verely, that it wilbe very harde for the Aduerſarie, to geue any good and ſubſtantial reaſon, why to make a diuerſitie in the caſes. But touching the contrarie, there are good and probable conſideratiōs, which ſhall ſerue vs for the ſeconde cauſe. As, for that the grādfathers cal their nephewes,

as by

The grand fatheis cal their nephues, ſonnes. L. Gallus. § Inſtituës. ff. de liber. Et poſt. l. ff. C. de impub. Alia ſubſtan c 1. q. 4 Father and ſon cõpted in perſon ãd flesh, in maner one

as by a more pleaſant plauſible name, not only their children, but their ſonnes alſo, and for that the ſonne being deceaſed (the grãdfather ſuruiuing) not only the grãdfathers affection, but alſo ſuch right, title and intereſt, as the ſonne hath by the lawe, and by proximitie of blood, growe and drawe al to the nephew, who repreſenteth and ſupplieth the fathers place, the father and the ſonne being compted in perſon and in fleſh in maner but as one. Why ſhal then the bare and naked conſideration of the external and accidental place of the birth only ſeuer and ſunder ſuche an entier, inwarde and natural coniunction? Adde therevnto, the many and great abſurdities, that may hereof ſpring and enſue.

Great abſurditie, in excluding the true ãd right ſucceſſour, for the place of his birth only.

Diuerſe of the Kinges of this Realme, as wel before the time of King Edwarde the third (in whoſe time this ſtatute was made) as after him, gaue their daughters out to foraine, and ſometimes to meane Princes in mariage. Which they would neuer ſo often times haue done, if they had thought, that whyle they wente about to ſet forth and aduance their iſſue, their doinges ſhould haue tended to the diſheriting of them from ſo

great

great, large and noble a Realme, as this is: which might haue chanced, if the daughter hauing a ſonne or daughter, had died, her father liuing. For there ſhould this ſuppoſed Maxime haue ben a barre to the children, to ſuccede their grandfather.

This abſurditie would haue bene more notable, if it had chanced about the time of King Henry the ſecõd, or this king Edward or king Henry the firſte and ſixte, when the poſſeſsions of the Croune of this Realme were ſo amply enlarged in other Countries beyond the ſeas. And yet neuer ſo notable, as it might haue bene hereafter in our freſh memorie and remẽbrance, if any ſuch thing had chanced (as by poſsibilitie it might haue chanced) by the late mariage of King Philippe and Queene Marie.

For, admitting their daughter maried to a foraine Prince, ſhould haue dyed before them, ſhe leauing a ſonne ſuruiuing his father and grandmother, they hauing none other iſſue ſo nigh in degree: then would this late framed Maxime haue excluded the ſame ſonne lamẽtably and vnnaturally from the ſucceſsion of the Croune of Englande, and alſo the ſame Croune from the inheri-

tance

tance of the Realmes of Spain, of both Sicilies, with their appurtenāces, of the Dukedō of Milan, and other landes and Dominiōs in Lumbardy and Italie, as alſo from the Dukedomes of Brabant, Luxēburg, Geldres, Zutphan, Burgundie, Friſeland, from the Countreies of Flandres, Artois, Holland, Zealād, and Namurs, and from the new found lands, parcel of the ſaid Kingdome of Spaine. Which are (vnleſſe I be deceued) more ample by dubble or treble, then al the Countreies now rehearſed. Al the which Countreies by the foreſaid Mariage ſhould haue bene by al right deuolued to the ſaid ſonne, if any ſuch child had bene borne.

If either the ſame by the force of this iolye newe found Maxime had bene excluded from the Croune of England, or the ſaide Croune from the inheritance of the foreſaid Countreies: were there any reaſon to be yelded, for the maintenance of this ſuppoſed rule or Maxime in that caſe? Or might there poſsibly riſe any commodity to the Realme, by obſeruing therein this rigorous pretenſed rule, that ſhould by one hundred part counteruaile this importable loſſe and ſpoile of the Croune, and of

the lawful inheritour of the same?

But perchance for the auoiding of this exception limited vnto the blood roial, some wil say, that the same was but a priuilege graunted to the Kinges children, not in respect of the succession of the Croune, but of other landes descending to them from their Auncestours. Whiche although we might very wel admit and allow: yet can it not be denied, but that the same priuilege was graũted vnto the Kinges children and other descendantes of the Blood roial, by reason of the dignity and worthines of the Croune, which the King their father did enioy, and the great reuerence, which the law geueth of dewtie therevnto. And therefore if ye would go about, to restraine and withdraw from the Croune that priuilege, whiche the lawe geueth to the Kinges children for the Crounes sake: ye should doo therein contrarie to al reason, and against the rules of the Arte of Reasoning, which saith, that: *Propter quod vnumquodque, & illud magis.*

An euasion auoided, pretẽding the priuilege of the Kigs children not to be in respect of the Croune, but of other lades.

Byside that, I would faine knowe, by what reason might a man saye, that they of the Kinges Bloodde borne out of the allegeaunce of Englande, maye inherite

landes

landes within this Realme, as heires vnto their Anceſtours, not being able to inherite the Croune. Truly in mine opinion it were againſt al reaſon. But on the contrarie ſide, the very force of reaſon muſte driue vs to graunt the like. Yea more great and ample priuilege and benefit of the law in the ſucceſsion of the Croune. For the Roial blood, where ſo euer it be found, wil be taken as a pretious and ſinguler Iewel, and wil carie with it his worthie eſtimation and honour with the people, and, where it is dew, his right withal.

The royall blood beareth his honour vvith it, vvhereſo euer it be.

By the Ciuil law the right of the inheritance of priuate perſons is hemmed and inched within the bandes of the tenth degre. The Blood roial runneth a farther race, and ſo farre as it may be found: wherewith the great and mightie Conquerors are glad and faine to ioine withal, euer fearing the weaknes of their blooddie ſworde, in reſpect of the greate force and ſtrength of the ſame. For this cauſe was Henrie the firſte, called for his learning and wiſedome Beauclerke, glad to conſociate and couple him ſelf with the auncient Roial blood of the Saxons, which cõtinuing in the Princely Succeſsiõ from

Vide Anto. Corſetum de poteſt. et excell. regi. q. 106.

Cõquerors glad to ioine vvith the royall blood. Henry the firſt.

from worthie king Alured, was cutte of by the death of the good king Edward: and by the mariyng of Mathildis being in the fourth degree in lineal descent to the said king Edward, was reuiued and reunited. From this Edward the Queene of Scotlād (as we haue before shewed) taketh her noble auncient Petigrue. These then, and diuers other reasons and causes mo, may be alleaged for the wayeing and setting foorth of the true meaning and intent of the said law.

Now in case these two causes and cōsiderations wil not satisfie th'Aduersarie: we will adioine thereunto a third, which he shal neuer by any good and honest shift auoid. And that is the vse and practise of the Realme, as wel in the time foregoing the said statute, as afterward.

We stand vpon the interpretation of the cōmon law recited and declared by the said statute. And how shal we better vnderstand what the law is therein, then by the vse and practise of the said lawe? For the best interpretation of the lawe, is custome. But the Realme before the statute, admitted to the Croune not only kings children and others of the first degree, but also of a farther degree,

L. ff. de legibus.

Common vse and practise the best interpretation of the lavv

and such as were plainely borne out of the Kings allegeance. The foresaid vse and practise appeareth as well before, as sithens the time of the Conquest. Among other King Edward the Confessour, being destitute of a lawful Heire within the Realme, sent into Hũgary for Edward his Nephew surnamed Outlaw, son to King Edmũd called Irõside, after many yeres of his exile, to returne into Englãd, to th'intent the said Outlaw should inherite this Realme, whiche neuertheless came not to effect, by reason the said outlaw died before the said king Edward his Vncle.

Eodẽ anno Rex cũ in diebus suis processisset Aeldredũ Vigornen sem Episcopum ad Regem Hungarie transmittens, reuocauit inde filium fratris sui Edmundi Eduardum eũ tota familia sua, ut uel ipse, uel filij eius sibi succederẽt in regnum. Flor. histor 1057.

After whose death, the said king apointed Eadgar Etheling sonne of the said Outlaw, being his next cosen and heire, as he was of right, to the Croune of Englãd. And for that the said Eadgar was but of yong and tender yeares, and not able to take vpõ him so great a gouernement: the said king cõmitted the protection, as wel of the yong Prince, as also of the Realm, to Harold Earle of Kent, vntil suche time, as the said Eadgar had obteined perfit age to be hable to weld the state of a King. Which Harold neuertheless cõtrary to the trust, supplanted the said yong Prince of the Kingdome, and put the Croune vpon his own head.

Flor histo. 1066. Aelredus Regioualdens. de reg. Anglorum ad Regem Henr. 2.

By

By this it is apparent, that foraine birth was not accõpted of, before the time of the Cõqueſt, a iuſt cauſe to repel and reiect any man, being of the next proximitie in blood, frõ the Title of the Croune. And though the ſaid king Edward the Cõfeſſors wil and purpoſe toke no ſuch force and effect, as he deſired, and the law craued: yet the like ſucceſſion toke place effectuouſly in king Stephen and king Héry the ſecõd, as we haue already declared. Neither wil th'Aduerſaries ſhift of forainers borne of father and mother, which be not of the kings alegeãce, help him: foraſmuch as this clauſe of the ſaid ſtatut is not to be applied to the kings childrẽ, but to others, as appeareth in the ſame ſtatute. And theſe two kings, Stephẽ and Henrie the 2. as they were borne in a forain place: ſo their fathers and mothers wer not of the kings allegeãce, but mere Aliens and ſtrãgers. And how notorious a vaine thing is it, that th'Aduerſarie would perſwade vs, that the ſaid K. Henrie the ſecõd rather came in by force of a cõpoſition, then by the proximitie and nearenes of blood: I leaue it to euery man to cõſider, that hath any maner of feling in the diſcours of the ſtories of this realm. The cõpoſitiõ did

King Stephen, and King H. 2.

The aduerſaries fond imagination, that King H. 2. ſhould come to the croune by compoſition: not by proximitie of blood.

Rex Stephanus omni hærede uiduatus, præter solummodo Ducem Henricum, recognouit in conuentu Episcoporũ & aliorum de regno Optimatum quod Dux Her. ius hæreditariũ in regnũ Angliæ habebat. Et Dux benigne concessit, ut Rex Stephanus tota uita sua suũ regnũ pacifice possideret. Ita tamen confirmatum est pactũ, quod ipse Rex, & ipsi tũc præsentes cum cæteris regni optimatibus iurarẽt, quod Dux Henr.

procure him quietnes and reſt for the time with a good and ſure hope of quiet and peaceable entrance alſo after the death of King Stephen. and ſo it followed in deede: but ther grew to him nomore right therby, then was due to him before. For he was the true heir to the Croune, as appeareth by Stephen his Aduerſaries owne confeſsion. Henry the firſte maried his daughter Mathildis to Henry the Emperour, by whome he had no childrẽ. And no dout in caſe ſhe had had any children by th'Emperour, they ſhould haue ben heires by ſucceſsion to the Croune of England. After whoſe death ſhe retourned to her father: yet did King Henry cauſe all the Nobilitie by an expreſſe othe, to embrace her after his death as Queene, and after her, her children.

Not long after, ſhe was maried to Ieffrey Plantagenet a Frenchman borne, Earle of Aniowe, who begat of her this Henry the ſecond, being in France. Whervpon the ſaid King did reuiue and renue the like othe of allegeãce, aſwel to her, as to her ſonne after her. With the like falſe perſuaſiõ the Aduerſarie abuſeth him ſelfe and his Reader, touching Arthur Duke of Britanie, Nephew

phew to King Richard the first. As though forsooth he were iustly excluded by Kinge Iohn his vncle, bycause he was a forainer borne. If he had said, that he was excluded, by reason the vncle ought to be preferred before the Nephewe, though it should haue ben a false allegation, and plaine against the rules of the lawes of this Realme: (as may wel appeare among other thinges by King Richard the second, who succeded his grād father king Edward the third, which Richard had diuerse worthie and noble vncles, who neither for lacke of knowledge coulde be ignorant of the right, neither for lacke of frendes, courage and power, be enforced to forbeare to chalenge their title and interest) yet should he haue had some countenance of reason and probabilitie, bicause many arguments and the authoritie of many learned and notable Ciuilians doo concurre for the vncles right, before the Nephewe.

post mortē Regis, si illum superuiueret, regnum sine aliqua contradictione obtineret. Flor. histo. An 1153.

The like fond imagination touching King Richardes nephevv.

Diuersitie of opiniōs touching the vncle ād nephue vvhether of them ought to be preferred in the royall gouernement.

But to make the place of the natiuitie of an inheritour to a kingdom, a sufficiēt barre against the right of his blood, it seemeth to haue but a weake and slender holde and grounde. And in our case it is a most vnsure and false ground, seeing it is moste true, that

King Richard the firſt (as we haue ſaid) declared the ſaid Arthur, borne in Britanie, and not ſon of a King, but his brother Geffreys ſonne Duke of Britanie, heire apparent, his vncle Iohn yet liuing. And for ſuch a one is he taken in al our ſtories. And for ſuch a one did all the worlde take him, after the ſaid King Richard his death, neither was King Iohn taken for other, then for an vſurper by excluding him, and afterward for a murtherer for impriſoning him, and priuily making him away. For the which facte the French King ſeaſed vpon al the goodly Coũtries in France belonging to the King of England, as forfeited to him being the chiefe Lorde. By this outragious deede of King Iohn, we loſt Normandie withall, and our poſsibilitie to the inheritance of all Britanie, the right and Title to the ſaid Britanie being dewe to the ſaid Arthur and his heires by the right of his mother Conſtance. And though the ſaid king Iohn by the practiſe and ambition of Quene Elenour his mother, and by the ſpecial procurement of Huberte then Archebiſhop of Caunterburie, and of ſome other factious perſons in Englãd, preuẽted the ſaid Arthur his nephew (as it was eaſy for him to do) ha-

The poſſions of the Croune of Englãd that were beyond the ſeas, ſeaſed into the Frenche kings hãds for the murther of Arthur.

do) hauing gotten into his handes al his brother Richardes treasure, bysides many other rentes then in England: and the said Arthur being an infante, and remaining beyond the sea in the custody of the said Constance: yet of this fact, being against al Iustice, aswel the said Archbishop, as also many of th'other did after most earnestly repent, considering the cruel and the vniust putting to death of the said Arthur procured, and (after some Authours) committed by the said Iohn himself. Which most foul ād shamful act the said Iohn neded not to haue committed, if by foraine birth the said Arthur had bē barred to inherit the Cróune of England. And much lesse to haue imprisoned that most innocent Ladie Elenor, sister to the said Arthur, in Bristow Castle, wher she miserably ended her life: if that gay Maxime would haue serued, to haue excluded these two childrē, bicause thei wer strāgers, borne in the partes beyond the seas. Yea, it appeareth in other doings also of the said time, and by the storie of the said Iohn, that the birth out of the legeāce of England, by father ād mother forain, was not take for a sufficiēt repulse and reiectiō to the right and title of the Cróune. For the Barōs of Englād

Polid. 15. flor histor. An. 1208.

being then at dissension with the said King Iohn, and renoūcing their allegeance to him, receaued Lewis the eldest sonne of Philip the Frēch king, to be their King, in the right of Blanch his wife; whiche was a stranger borne, albe it the lawful Neece of the said Richard, and daughter to Alphonse king of Castil, begotten on the bodie of Elenour his wife, one of the daughters of king Henrie the second, and sister to the said king Richard and king Iohn. Which storie I alleage only to this purpose, thereby to gather the opinion of the time, that foraine birth was then thought no barre in the Title of the Croune. For otherwise, how could Lewis of Frāce pretēd title to the Croune in the right of the said Bblach his wife borne in Spaine?

Lewis the French Kings son claimed the Croune of this Realme in the Title of his wife *Pro hereditate uxoris meæ, scilicet neptis Regis Ioā. usq; ad mortem si necessitas exigeret, decertabo. Flor. histo. Anno 1216.*

These examples are sufficient, I suppose, to satisfie and content any man (that is not obstinatly wedded to his own fond fantasies and froward friuolous imaginatiōs, or otherwise worse depraued) for a good sure and substantial interpretation of the cōmon law. And it were not altogether from the purpose, here to consider and weigh, with what and how greuous plagues this Realme hath bene oft afflicted and scourged, by reason of

wrongful and vſurped titles. I wil not reuiue by odious rehearſal the greatenes and number of the ſame plagues, as wel otherwiſe, as eſpecially by the contention of the noble houſes and families of York and Lancaſter: ſeeing it is ſo fortunately, and almoſt within mans remẽbrance extinct and buried.

I wil now put the gentle Reader in remembrance of thoſe only, with whoſe vſurping Titles we are nowe preſently in hand. And to begyn with the moſt auncíẽt: what became, I pray you, of Harold, that by briberie and helpe of his kinred, vſurped the Croune againſt the foreſaid yong Eadgar, who (as I haue ſaid, and as the old monumẽts of our Hiſtoriographers do plainly teſtifie) was the true and lawful Heire? Could he, thinke you, enioy his ambitious and naughty vſurping one whole entier yere? No ſurely. ere the firſt yeare of his vſurped reigne turnẽd about, he was ſpoiled and turned out both of Croune, and his life withal. Yea his vſurpation occaſioned the conqueſt of the whole realme by Willã Duke of Normãdie baſtard ſonne to Robert the ſixt Duke of the ſame. And may we thinke al ſafe and ſound now from like danger, if we ſhould tread the

Haroldus muneribus & genere fretꝰ, regni diadema innaſit. H. Hunte hiſt. Angli lib. 5

Cui regnũ iure hereditario debebatur Fal-redus Rhiual in hiſto. R. Angliæ ad H. 2.

Cui de iure debebatur regnum Anglorum Io. Lond. in Chron. Angliæ.

Eadem uerba ſunt in Math. Weſtmon. in flor. hiſt. a. 1066

What calamities fell to this Realm by the vſurping of King Harolde, King Stephen, and Iohn.

noble ſaid

Rex Eduardus miſit &c. ut uel ipſe Eduard. uel filius eius ſibi ſuccederent &c. Rich. Ciceſt. uid. Wil. Malmeſt. de reg. Angl. E. 2. c. 45. lib. 3. c. 5.

ſaid wrong ſteppes with Harolde, forſaking the right and high way of law and iuſtice?

What ſhal I now ſpeake of the cruel ciuil warres betwene King Stephen and King Henry the ſecond, whiche warres roſe, by reaſon of the ſaid Henry was vniuſtly kept frō the Croune dew to his mother Maude, and to him afterwardes. The pitiful reigne of the ſaid Iohn who doth not lament, with the lamentable loſſe of Normandie, Aquitaine, and the poſsibilitie of the Dukedome of Britanie, and with the loſſe of our other goodly poſſeſsions in France, whereof the Croune of England was robbed and ſpoiled by the vnlawful vſurping of him againſt his nephew Arthur. Wel, let vs leaue theſe greuouſe and lothſome remembrances, and let vs yet ſeeke, if we may finde any later interpretation, either of the ſaid ſtatute, or rather of the cōmon law for our purpoſe. And lo, the great goodnes and prouidence of God, who hath (if the foreſaid exāples would not ſerue) prouided a later, but ſo good, ſo ſure, ſo apt and mete interpretatiō for our cauſe, as any reaſonable hart may deſire. The interpretatiō directly toucheth our caſe, which I meane by the mariage of the Lady Margaret

eldeſt

eldeſt daughter to King Hēry the vij. vnto Iames the fourth Kīg of Scotlād, and by the opiniō of the ſaid moſt prudēt Prince in beſtowing his ſaid daughter into Scotlād: a mater ſufficient inough, to ouerthrow al thoſe cauilling inuētiōs of the aduerſarie. For what time King Iames the fourth ſent his ambaſſadour to king Hēry the ſeuēth to obteine his good wil, to eſpouſe the ſaid Lady Margaret, there were of his Counſaile not ignorant of the lawes and Cuſtomes of the Realme, that did not wel like vpon the ſaid Mariage, ſaying, it might ſo fal out, that the right and Title of the Croune might be deuolued to the Lady Margaret and her childrē, and the Realm therby might be ſubiect to Scotlād. To the whiche the prudent and wiſe King anſwered, that in caſe any ſuch deuolution ſhould happen, it would be nothing preiudicial to England. For England, as the chief, and principal, and worthieſt part of the Ile, ſhould drawe Scotland to it, as it did Normandie from the time of the Conqueſte. Which anſwere was wonderfully wel liked of al the Counſaile. And ſo conſequētly the mariage toke effect, as appereth by Polydor the Hiſtoriographer of this Realm, and ſuch

Polid. 26.

King. H. 7 vvith his Counſaile is a good interpretor of our preſent cauſe.

a one, as wrote the Actes of the time by the inſtruction of the King him ſelfe.

I ſay then, the worthy wiſe Salomon foreſeeing, that ſuch deuolution might happen, was an interpretour with his prudente and ſage Counſaile for our cauſe. For els, they neaded not to reaſon of any ſuch ſubiection to Scotlande, if the children of the Ladie Margaret might not lawfully inherite the Croune of England. For, as to her huſband we could not be ſubiect, hauing him ſelfe no right by this mariage to the Title of the Croune of this Realme. Wherevpon I may wel inferre, that the ſaid newe Maxime of theſe men (whereby they would rule and ouer rule the ſucceſsion of Princes) was not knowen to the ſaid wiſe King, neither to any of his Counſaile: Or if it were, yet was it taken not to reache to his blood royall borne in Scotlande. And ſo on euery ſide the Title of Quene Marie is aſſured. So that now by this that we haue ſaid, it may eaſely be ſeen, by what light and ſlender conſideration the Aduerſarie hath gone about to ſtrayne the wordes *Infantes* or children to the firſt degree only. Of the like weight is his other cõſideration, imaginig and ſurmiſing, this ſta-

tute to be made, bicauſe the King had ſo many occaſiõs to be ſo oft ouer the ſea with his ſpouſe the Queene. As though diuers Kings before him vſed not often to paſſe ouer the ſeas. As though this were a perſonal ſtatute made of ſpecial purpoſe, and not to be takẽ as a declaratiõ of the cõmon law. Which to ſay, is moſt directly repugnant and contrary to the letter of the ſaid ſtatute. Or as though his children alſo did not very often repaire to outward Countries: as Iohn of Gaunt, Duke of Lancaſter, that maried Peters the King of Caſtiles eldeſt daughter, by whoſe right he claimed the Croune of Caſtile: as his brother Edmũd Erle of Cambridge, that maried the yongeſt daughter: as Lionell Duke of Clarauncs, that maried at Milaine Violãt daughter and heir to Galeatius Duke of Milan: But eſpecially Prince Edwarde, whiche moſte victorioufly toke in battaile Iohn the French King, and brought him into England his priſoner, to the great triumphe and reioyſing of the Realme, whoſe eldeſt ſonne Edward that died in ſhort time after, was borne beyond the ſeas in Gaſcoine, and his other ſonne Richard, that ſucceeded his grandfather, was borne at Burdeaux, as theſe

The mariages of King E. 3. ſonnes.

noble

noble King Edwardes ſonnes maried with forainers: ſo did they geue out their daughters in mariage to foraine Princes, as the Duke of Lancaſter, his daughter Philippe to the king of Portingale, and his daughter Catherin to the King of Spaine, and his Neece Iohan, daughter to his ſonne Earle of Somerſet, was ioyned in mariage to the King of Scottes: Iohan, daughter to his brother Thomas of Wodſtocke Duke of Glouceſter was Queene of Spaine, and his other daughter Marie, Ducheſſe of Britannie.

Now by this mans interpretation, none of the iſſue of al theſe noble Women could haue enioyed the Croune of England, when it had fallen to them (though they had bene of the neereſt roial blood) after the death of their Aunceſtours. Which ſurely had bene againſt the auncient preſidentes and examples that we haue declared, and againſt the common Lawe (the whiche muſte not be thought by this Statute any thing taken away, but only declared) and againſt al good reaſon alſo. For as we would haue thought this Realme greatly iniured, if it had ben defrauded of Spaine or any of the foreſaid coũtreies, being deuolued to the ſame by the

fore-

foreſaid Mariages, as we thincke our ſelf at this day iniured, for the withholding of France: ſo the iſſue of the foreſaide noble womē might and would haue thought them hardly and iniuriouſly handled, yf any ſuch caſe had happened. Neither ſuche friuolous interpretation and gloſes, as this man nowe frameth, and maketh vppon the ſtatute, woulde then haue ſerued, nor nowe wil ſerue.

But of all other his friuolous and foliſh gheſsing vpon the clauſe of the ſtatute for *Infantes de Roy*, there is one moſt fond of al. For he would make vs beleue, ſuch is the mans ſkil, that this ſtatute touching *Infantes de Roy* was made for the great doubte more in them, then in other perſonnes, touching their inheritance to their Auncеſtours. For being then a Maxime (ſaieth he) in the lawe, that none could inherite to his Auncеſtours being not of father and mother vnder the obedience of the King: ſeing the King him ſelfe could not be vnder obedience: it plainely ſeemed, that the Kinges children were of farre worſe condition, then others, and quite excluded. And therefore he ſaith, that this ſtatute was not to geue them any other

A fond imagination of the Aduerſarie of the ſtatute of 25. E. 3.

other priuilege, but to make them equall with other. And that therefore this ſtatute, touching the Kinges children, is rather in the ſuperficial parte of the worde, then in effecte.

Nowe among other thinges he ſaieth (as we haue ſhewed before) that this word *Infantes de Roy* in this ſtatute mentioned, muſt be taken for the children of the firſt degree, whiche he ſeemeth to proue by a note taken out of M. Raſtal. But to this we anſwer, that this mā ſwetely dreamed, when he imagined this fonde and fantaſticall expoſition: And that he ſhewed him ſelfe a very infante in law and reaſon. For this was no Maxime, or at leſt not ſo certaine, before the making of this ſtatute, whiche geueth no new right to the Kinges children, nor anſwereth any doubt touching them, and their inheritance: but ſaith, that the law of the Croune of England is, and alwaies hath bene, which lawe, ſaith the King, ſay the Lordes, ſay the Commons, we allowe and affirme for euer, that the Kinges children ſhalbe hable to inherite the Landes of their Anceſters, whereſoeuer they be borne.

There was no doubt made of the Kinges children borne beyonde the ſeas.

Al the doubt was for other perſons, as

appea-

appeareth euidētly by the tenour of the ſtatute, whether by the cōmon law they being borne out of the allegeance, were heritable to their Auncestours. And it appeareth, that th'Aduerſary is driuē to the hard wal, when he is faine to catch hold vpon a ſelie poore marginal note of M. Raſtal, of the Kinges childrē, and not of the Kings childrens children. Which yet nothing at al ſerueth his purpoſe touching this ſtatute. But he, or the Printer, or who ſo euer he be, as he draweth out of the text many other notes of the matter therin cōpriſed: ſo vpō theſe Frēch wordes, *Les enfants de Roy*, he noteth in the Margēt, *The Kings childrē*: but how far that word reacheth, he ſaieth neither more, nor leſſe.

Neither it is any thing preiudicial to the ſaid Queenes right or Title, whether the ſaid wordes *Infants*, ought to be take ſtrictly for the firſt degree, or farther enlarged. For if this ſtatute toucheth only the ſucceſsion of the Kings children to their Auncestours for other inheritāce, and not for the Crounc, as moſt men take it, and as it may be (as we haue ſaid) very wel take and allowed: then doth this ſuppoſed Maxime of forain borne, that ſeemeth to be gathered out of this ſta-

tute, nothing anoy or hinder the Queene of Scotlandes Title to the Croune, as not therto apperteining. On the other side, if by the inheritance of the kings childrē, the Croune also is meant: yet neither may we enforce the rule of foraine borne vpō the kings children, which are by the expresse wordes of the statute excepted, neither enforce the word *Infra* to the first degree only, for such reasons, presidents, and examples, and other prouffes largely by vs before set forth to the cōtrarie: seing that the right of the Croune falling vpō them, they may wel be called the kings Childrē, or at the lest the childrē of the Croune. There is also one other cause, why though this statute reach to the Croune, and may, and ought to be expoūded of the same: the said Queene is out of the reach and cōpasse of the said statute. For the said statute can not be vnderstanded of any persons borne in Scotlande or Wales, but onely of persons borne beyond the sea, out of the allegeance of the King of England: that is to wytte, France, Flandres, and such like. For England, Scotland and Wales be al within one Territorie, and not diuided by any sea. And al old Recordes of the law, concerning

This statute toucheth not the Q. of Scotlād, as one not borne beyond the seas.

seruice to be done in those two Countries, haue these words *Infra quatuor Maria*, within the fower seas, which must nedes be vnderstād, in Scotlād and Wales, aswel as in Englād bicause they be al within one continent cōpassed with fower seas. And likewise be many auncient statutes of this Realm writtē in the Norma Frēch, which haue these wordes *deins les quatre mers*, that is, within the fower seas. Now cōcerning the statute, the title of the same is, of those that are born beyond the sea, the doubt moued in the corps of the said statut, is also of childrē born beyond the sea out of the allegeance, with diuers other brāches of the statute tēding that way. Whereby it seemeth, that no part of the statute toucheth these that are born in Wales or Scotlād. And albe it at this time, and before in the reigne of Edward the first, Wales was fully reduced, annexed and vnited to the propre Dominion of England: yet was it before subiected to the Croune and King of England as to the Lorde and Segniour, aswel as Scotland. Wherefore if this statute had ben made before the time of the said Edwarde the first, it seemeth, that it could not haue ben stretched to Wales, no more then it can

Vide statuta Walliæ in magna Charta.

Walesvvas vnder the allegeance of Englād before it vvas vnited to the Croune.

it can now to Scotland. I doe not therefore a litle meruaile, that euer this man for pure shame could finde in his harte, so childishly to wrangle vpon this word *Infantes*, and so openly to detorte, deprave, and corrupt the common lawe, and the Actes of Parlament.

And thus may you see, gentle Reader, that nothing can be gathered, either out of the said supposed general rule or Maxime, or of any other rule or Principle of the lawe, that by any good and reasonable construction can seeme to impugne the title of the said Ladie Marie now Queene of Scotland, of, and to the Croune of this Realme of England, as is aforesaid.

Title of the Crowne of England before it was vested in the Crowne.

We are therefore now last of al to consider, whether there be any statute or Acte of Parlament, that doth seeme, either to take away, or preiudice the title of the said Lady Marie. And bycause touching the foresaid mentioned statute of the 25. yeare of King Edward the thirde, being only a declaration of the common law, we haue already sufficiently answered: we wil passe it ouer, and consider vppon the statute of 28. and 36. of King Henry the eight, being the only shoteanker of al the Aduersaries, whether there

be any matter therein conteined, or depending vpon the ſame, that can by any meanes deſtroie or hurt the title of the ſaid Ladie Marie Queene of Scotland to the ſucceſsiō of the Croune of England.

The ſtatutes of King H. 8. touching the ſucceſſion of the Croune.

It doth appeare by the ſaid ſtatute of 28. of King Henry the eight, that there was authoritie geuen him by the ſame, to declare, limite, appoint, and aſsigne the ſucceſsion of the Croune by his Letters Patentes, or by his laſt Wil ſigned with his owne hande. It appeareth alſo by the foreſaid ſtatute made 35. of the ſaid King, that it was by the ſame enacted, that the Croune of this Realme ſhould go and be to the ſaid King, and to the heires of his body lawfully begotten, that is to ſay, vnto his Highnes firſt ſon of his body betwene him and the Ladie Iane then his wife, begotten, and for default of ſuch iſſue, then vnto the Lady Marie his daughter, and to the heires of her body lawfully begotten, and for default of ſuch iſſue, then vnto the Ladie Elizabeth his daughter, and to the heires of her body laufully begotten, and for default of ſuch iſſue, vnto ſuche perſon or perſons in remainder or reuerſion, as ſhould pleaſe the ſaid King Henry the eight, and

according to ſuch eſtate, and after ſuch manner, order and conditiō, as ſhould be expreſſed, declared, named and limited in his Letters Patentes, or by his laſt Wil in writing, ſigned with his owne hande.

By vertue of whiche ſaid Acte of Parlament the Aduerſaries doo alleage, that the ſaid late King Henry the eight afterward by his laſt Wil in writing ſigned with his owne hand, did ordeine and appoint, that if it happen, the ſaid Prince Edward, Ladie Marie, and Lady Elizabeth to dye without iſſue of their bodies lawfully begotten: then the Croune of this Realme of Englande, ſhould goe and remaine vnto the heires of the bodie of the Ladie Francis his Neece, and th'eldeſt daughter of the Frēch Quene. And for the defaulte of ſuche iſſue, to the heires of the body of the Ladie Elenour his Neece, ſeconde daughter to the Frenche Queene, lawfully begotten. And if it happened, the ſaid Ladie Elenor to dye without iſſue of her body lawfully begotten, to remaine and come to the nexte rightfull heires. Wherevpon the Aduerſaries do inferre, that the ſucceſsiō of the Croune ought to go to the childrē of the ſaid Ladie Frācis,

and to

and to their heyres, according to the said supposed Wil of our late Souereigne Lorde King Henry the eight: and not vnto the Ladie Marie Queene of Scotlande that nowe is.

An answer to the fore said statuts

To this it is, on the behalf of the said Lady Marie Queene of Scotland among other things answered, that King Henry the eight neuer signed the pretesed Wil with his owne hand: and that therfore the said Wil can not be any whit preiudicial to the said Queene. Against which answere for the defence and vpholding of the saide Will, it is replied by the Aduersaries, first that there were diuers copies of his Wil found signed with his owne hande, or at the leastwise enterlined, and some for the most part writen with his owne hande: out of the whiche it is likely, that the original Wil, commonly called King Henry the eightes Will, was taken and fayer drawen out. Then, that there be great and vehement presumptions, that for the fatherly loue that he bare to the cõmon wealth, and for the auoiding of the vncerteintie of the succesiõ, he wel liked vpõ and accepted the authoritie geuen him by Parlament, and signed with his owne hande

The effect of the Aduersaries argumentes for the exclusion of the Quene of Scotland by a pretensed vvil of King H.8

the ſaid original Wil, whiche had the ſaid limitation and aſsignation of the Croune. And theſe preſumptions are the more enforced, for that he had no cauſe, why he ſhould beare any affection either to the ſaid Queene of Scotland, or to the Lady Leneux and hauing withal no cauſe to be greaued or offended with his ſiſters the Frenche Queenes children, but to put the matter quite out of al ambiguitie and doubte, it appeareth (they ſay) that there were eleuen witneſſes purpoſely called by the king, who were preſente at the ſigning of the ſaid Wil, and ſubſcribed their names to the ſame. Yea the chief Lordes of the Coũſaile were made and appointed executours of the ſaid Wil, and they and other had great Legacies geuen them in the ſaid Wil which were paid, and other thinges compriſed in the Wil, accompliſhed accordingly.

There paſſed alſo purchaſes, and Letters Patentes betwene King Edwarde, and the executors of the ſaid Wil, and others for the execution and performance of the ſame. Finally the ſaid Teſtament was recorded in the Chancerie. Wherfore they affirme, that there ought no manner of doubt moue any

man

man to the cõtrarie, and that either we muſt graunt this Wil to be ſigned with his hand, or that he made no Wil at al: both muſt be graunted, or both denied. If any wil deny it, in caſe he be one of the witneſſes, he ſhal impugne his owne teſtimonie: if he be one of the executours, he ſhal ouerthrow the foundatiõ of al his doinges, in procuring the ſaid Wil to be inrolled, and ſet forth vnder the great Seale. And ſo by their dubblenes they ſhal make them ſelues no mete witneſſes.

Nowe a man can not lightly imagine, how any other, byſides theſe two kind of witneſſes (for ſome of them, and of the executors, were ſuch as were cõtinually wayting vpon the Kinges perſon) may impugne this Wil, and proue, that the king did not ſigne the ſame. But if any ſuch impugne the Wil, it would be cõſidered, how many they are, and what they are: and it wilbe very harde to proue *negatiuam facti*. But it is euidente, ſay they, that there was neuer any ſuch lawful proufe againſt the ſaid Wil producted. For if it had ben, it would haue ben publiſhed in the Starrechamber, preached at Poules Croſſe, declared by Acte of Parlament, proclaimed in euery quarter of the Realme,

Realme. Yea, admitting, ſay they, that it were proued, that the ſaid pretenſed Wil lacked the Kinges hande: yet neuertheleſſe (ſay they) the very copies we haue ſpoken of, being written and ſigned, or at leaſt interlined with his owne hande, may be ſaide a ſufficient ſigning with his owne hande.

For ſeing the ſcope and final purpoſe of the ſtatute was, to haue the ſucceſsion prouided for and aſcerteined, whiche is ſufficiently done in the ſaid Wil: and ſeing his owne hande was required but onely for eſchewing euil and ſiniſter dealing, whereof there is no ſuſpicion in this Will to be gathered: what matter in the worlde, or what difference is there, when the King fulfilled and accompliſhed this gratiouſe Acte, that was loked for at his handes, whether he ſigned the Will with his owne hande, or no?

If it be obiected, that the King was obliged and bound to a certaine preciſe order and forme, which he could in no wiſe ſhift, but that the Acte without it muſte periſh, and be of no valewe: then, ſay they, wee vndoe whole Parlamentes, aſwel in Queene

Maries time, as in King Henry the eightes time. In Queene Maries time, bycauſe ſhe omitted the Style appointed by Parlamente, *Anno Henrici octauitriceſimo quinto*: In King Henries tyme, by reaſon there was a ſtatute, that the Kinges royal aſſent may be geuen to an Acte of Parlamente by his Letters Patentes ſigned with his hande, though he be not there perſonally. And yet did the ſaied King ſupplie full ofte his conſente by the ſtampe only. This yet notwithſtanding, the ſaid Parlamentes for the omiſsion of theſe formes ſo exactely and preciſely appointed, are not deſtroyed and diſannulled.

An.H.8.35. An.H.8.33. & 21.

After this ſorte in effecte haue the Aduerſaries replied for the defence of the ſaid pretenſed Will. To this we wil make our reioynder, and ſaye: Firſte, that our principall matter is, not to ioyne an iſſewe, whether the ſaide Kinge made and ordeyned any ſufficient Will, or no. We leaue that to an other time. But, whether he made any Teſtament, in ſuche order and formè, as the ſtatute requireth. Wherefore if it be defective in the ſaid forme, as we affirme it to be, were it otherwiſe ne-

An anſvver by the vvay of reioinder to the ſame.

uer ſo

uer so good and perfect, though it were exemplified by the great Seale, and recorded in Chancerie, and taken commonly for his Will, and so accomplished: it is nothing to the principal question. It resteth then for vs to consider the weight of the Aduersaries presumptions, whereby they would inforce a probabilitie, that the Testament had the foresaide requisite forme. Yet first, it is to be cõsidered, what presumptions, and of what force and number, do occurre to auoide and frustrate the Aduersaries presumptions, and all other like.

Diuers presumptions and reasons against this supposed will.

We say then, there occurre many likelyhoddes, many presumptions, many great and weightie reasons, to make vs to thinke, that as the king neuer had good and iuste cause, to minde and enterprise suche an Acte, as is pretended: so likewise he did enterprise no such Acte in deede. I deny not, but that there was such authoritie geuen him, neither I deny, but that he might also in some honorable sort haue practised the same; to the honour and wealth of the Realme, and to the good cõtentation of the same Realm. But that he had either cause, or did exercise the said authoritie in suche strange and dishonorable sort,

ſort, as is pretended: I plainely denie. For being at the time of this pretenſed Wil furniſhed and adorned with iſſue, the late king Edward, and the Ladies Marie, and Elizabeth, their ſtate and ſucceſsion being alſo lately by Acte of Parlament eſtabliſhed: what neede or likelyhod was there, for the king then to practiſe ſuch newe deuiſes, as neuer did, I ſuppoſe, any king in this Realme before, and fewe in any other byſide? And where they were practiſed, commonly had infortunate and lamentable ſucceſſe.

What likelyhode was there, for him to practiſe ſuch deuiſes, eſpecially in his later daies (when wiſdome, the loue of God, and his Realme ſhould haue bene moſte ripe in him) that were likely to ſturre vppe a greater fier of greeuouſe contention and woful deſtruction in England, then euer did the deadly factiō of the red Roſe and the white, lately by the incorporation and vnion of the houſe of Yorke and Lancaſter, in the perſon of his father through the mariage of Ladie Elizabeth eldeſt daughter of king Edwarde the fourth, moſt happily extinguiſhed and buried? And though it might be thought or ſaid, that there would be no ſuch cauſe of

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feare, by reason the matter passed by Parlament: yet could not he be ignorant, that neither Parlamentes made for Henry the fourth, or continuance of twoo Descentes (whiche toke no place in geuing any Title touching the Croune) in King Henry the sixt: nor Parlamentes made for King Richard the third, nor Parlaments of attainder made against his father, could either preiudice his fathers right, or releaue other against such, as pretended iust right and title.

And as he could not be ignorāt therof: so it is not to be thought, that he would abuse the great confidence put vppon him by the Parlament, and disherite without any apparent cause the next royal blood, and thinke all thinges sure by the colour of Parlament. The litle force whereof against the right inheritour, he had (to his fathers and his owne so ample benefit) so lately and so largely seene and felt. And yet if he minded at any time, to preiudice the said Lady Marie Queene of Scotland, of al times he would not haue done it then, when al his care was, by al possible meanes to contriue and compasse a mariage, betwene his sonne Edward, and the said Lady and Quene. Surely he was to wise

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of him selfe, and was furnished with to wise Counsailours, to take such an homely way, to procure and purchase the said mariage by.

And least of all can we say he attempted that dishonorable disherision for any special inclination or fauour he bare to the French Queene his sisters children. For there haue bene of his neere and priuie Counsaile, that haue reported, that the King neuer had any great liking of the mariage of his sister with the Duke of Suffolke, who maried her first priuily in France, and afterward openly in England. And as it is said, had his pardon for the said priuy mariage in writing. Howe so euer this matter goeth, certeine it is, that if this pretensed Will be true, he transferreed and trãsposed the reuersion of the Croune, not only from the Queene of Scotlãd, from my Ladie Leneux and their issue, but euen from my Ladie Francis, and my Ladie Elenour also, daughters to the Frenche Queene, whiche is a thing in a manner incredible, and therefore nothing likely.

I must now, gentle Reader, put thee in remẽbrance of two other most prẽgnãt and notable coniectures and presumptions. For

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among al other incõueniences, and absurdities, that do, and may accõpanie this rash and vnaduised acte by this pretẽsed Wil inconsiderately maintened: it is principally to be noted, that this Acte geueth apparẽt and iust occasion of perpetual disherison of the Style and Title of Frãce incorporated and vnited to the Croune of this Realme. For whereby do or haue the Frenchmen hitherto excluded the Kings of this Realme, claiming the Croune of France by the Title of Edward the third, falling vpon him by the right of his mother, other then by a politike and ciuil law of their owne, that barreth the female from the right of the Croune? And what doth this pretẽsed Act of king Henrie, but iustifie and strengthen their quarel, and ouerthroweth the foundatiõ and bulworke, whereby we maintaine our foresaid Title and claime? If we may by our municipal law exclude the said Queene of Scotland, being called to the Croune by the Title of generall heritage: then is their municipal law likewise good and effectual, and cõsequently we do and haue made al this while an vniust and wrongful claime to the Croune of France.

The suppo sed vvil is preiudicial to the Croune of Englande, for the claime of the croune of France.

But now to go somewhat farther in the matter,

matter, or rather to come neerer home, and to the quicke of the matter, we ſay: as there was ſome apparent and good cauſe, why the king ſhould the twentie and eight yeare of his reigne thinke vpon ſome limitation and appointement of the Croune (king Edward as yet vnborne) ſo after he was borne, and that the Title and intereſt of the reuerſion of the Croune after him was the thirtie and fifte yeare by Parlament confirmed to the late Queene Marie and her ſiſter Elizabeth: it is not to be thought, that he would afterward ieoparde ſo great a matter by a Teſtament and Wil, which may eaſely be altered and counterfeyted. And leaſt of al make ſuch aſsignation of the Croune, as is nowe pretended.

For being a Prince of ſuch wiſdome and experience, he could not be ignorant, that this was the next and redieſt way, to put the ſtate at leaſt of both his daughters to great peril and vtter diſheriſon. For the Kinges exãple and boldnes in interrupting and cutting away ſo many branches of the neereſt ſide and line, might ſone breede in aſpiring and ambitious hartes a bolde and wicked attempte, the way being ſo farre brought in

This ſuppoſed vvil geueth occaſion of ambitious aſpiring.

and prepared to their handes by the King him ſelfe, and their natures ſo readie and prone to follow euil preſidents, and to clime high by ſome colourable meanes or other, to ſpoile and depriue the ſaid daughters of their right of the Croune, that ſhould deſcend and fal vpon them, and to conuey the ſame to the heires of the ſaid Ladie Francis. And did not, I pray you, this drift and deuiſe fal out euen ſo, tending to the vtter excluſiō of the late Queene Marie, and her Siſter Elizabeth: if God had not of his mercy, moſt gratiouſly and wonderfully repreſſed and ouerthrowē the ſame?

Theſe reaſons then and preſumptions may ſeme wel able and ſufficient, to beare doune, to breake doune and ouerthrow the weake and ſlender preſumptions of th'Aduerſaries, grounded vpon vncertaine and mere ſurmiſes, gheſſes and coniectures: as among other that the King was offended with the Quene of Scotland, and with the Ladie Leneux. Which is not true. And as for the Ladie Leneux, it hath no manner of probabilitie: as it hath not in dede in the ſaid Queene. And if it had, yet it is as probable and much more probable, that the King would haue eſpeci-

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ally at that time (for ſuch cauſe, as we haue declared) ſuppreſſed the ſame diſpleaſure. Graunting now, that there were ſome ſuch diſpleaſure: was it honorable, either for the King, or the Realm, or was it, thinke ye, euer thought by the Parlament, that the King ſhould diſherite them for euery light diſpleaſure? And if (as the Aduerſaries confeſſe) the king had no cauſe to be offended with the Frēch Quenes childrē: why did he diſherite the Ladie Frācis, and the Ladie Elenor alſo?

Their other preſumption, whiche they ground vpō the auoyding of the vncertenty of the ſucceſsion, by reaſon of his Wil, is of ſmal force, and rather turneth againſt them. For it is ſo farre of, that by this meanes the ſucceſsion is made more certaine and ſure: that contrarywiſe it is ſubiecte to more vncerteintie, and to leſſe ſuertie, then before. For whereas before the right and claime to the Croune hong vppon an ordinarie and certaine courſe of the common lawe, vpon the certaine and aſſured right of the royall and vnſpotted blood, yea vppon the very lawe of nature (whereby many inconueniences, manie troubles, daungers and ſeditions are in al Countries politikely

Succeſsion to the Croune more vncertē bi the ſuppoſed vvil, then before.

auoided: ſo now depending vpon the ſtatute onely, it is as eaſie by an other ſtatute to be intringed and ouerthrowen. And depending vppon a Teſtament, is ſubiect to many corruptions, ſiniſter dealinges, cauillations, yea and iuſt ouerthrowes, by the diſhabilitie of the Teſtatours witneſſes or the Legatorie himſelfe, or for lacke of dewe order to be obſerued, or by the death of the Witneſſes vnexamined, and for many other like conſiderations. The Monumentes of al antiquitie, the memorie of al ages, and of our owne age, and dayly experience can tel and ſhewe vs many lamentable examples of many a good and lawful Teſtament by vndue and craftie meanes, by falſe and ſuborned witneſſes, by the couetous bearing and maintenance of ſuch as be in authoritie, quite vndone and ouerthrowne. Wherefore *Valerius Maximus* crieth out againſt *M. Craſſus*, and *Q. Hortenſius*: *Lumina Curiæ, ornamenta Fori, quod ſcelus vindicare debebant, inhoneſti lucri captura inuitati, authoritatibus ſuis texerunt.* This preſumption then of the Aduerſaries rather maketh for vs, and miniſtreth to vs good occaſion, to thinke, that the King would not haſard the weight and importāce of ſuch

Much forgerie and counterfeyting of Teſtaments

Valerius Maximus dict. et fact. lib. 9. c. 4.

of ſuch a matter, to reſte vpon the validitie or inualiditie of a bare Teſtament only.

By this that we haue ſaid we may probably gather, that the King had no cauſe to aduenture ſo great an interpriſe by a bare Wil and Teſtament. Ye ſhal now heare alſo, why we think he did neuer attempt or enterpriſe any ſuch thing. It is wel knowen, the King was not wonte lightly to ouerſlippe the occaſion of any great commoditie preſently offered. And yet this notwithſtanding, hauing geuen to him by Acte of Parlament the ordering and diſpoſition of al Chantries and Colleges, he did neuer or very litle practiſe and execute this authoritie. And ſhall we thinke, vnleſſe ful and ſufficient proufe neceſſarily enforce creditte, that the King, to his no preſent cõmoditie and aduantage, but yet to his great diſhonour, and to the great obloquie of his ſubiectes and other Countries, to the notable diſheriſon of ſo many the next royal blood, did vſe any ſuch authoritie, as is ſurmiſed?

Againe, if he had made any ſuch aſſignation: who doubteth, but that as he conditioned in the ſaid pretenſed Wil with his noble daughters, to marie with his Coũſels

In this ſuppoſed vvil is no condition for the mariage of the heires of the L. Francis, as is for the, Kinges ovvne daughters.

aduiſe, either els not to enioy the benefitte of the ſucceſsion: he would haue tyed the ſaid Ladie Francis and Ladie Elenours heirs to the ſame condition.

Farthermore, I am driuen to thinke, that ther paſſed no ſuch limitatiō by the ſaid king Henries wil, by reaſon there is not, nor was theſe many yeares any original copy therof, nor any authētical Record in the Chācerie, or els wher to be ſhewed in al Englād, as the Aduerſaries thēſelues confeſſe, and in the copies that be ſpread abrode, the witneſſes pretēded to be preſent at the ſigning of the ſaid Wil, be ſuch for the meaneſſe of their ſtate on the one ſide, and for the greatneſſe and weight of the cauſe on th'other ſide, as ſeme not the moſt ſufficient for ſuche a caſe. The importance of the cauſe, being no leſſe then the diſheriſion of ſo many heires of the Croune (as wel from the one ſiſter, as frō the other) required and craued ſome one or other of the priuie Coūſaile, or ſome one honorable and notable perſon to haue ben preſent at the ſaid ſigning, or that ſome notificatiō ſhould haue ben made afterward to ſuch perſons by the King him ſelfe, or at leaſt before ſome Notarie and authētical perſon for

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the better ſtrengthening of the ſaid Wil.

Here is now farther to be cõſidered, that ſeing the intereſt to the Croune is become a plaine teſtamentarie matter and claime, and dependeth vpon a laſt Wil: when, and before what Ordinarie this Wil was exhibited, allowed and prooued? Where, and of whome toke the Executours their othe for the true performãce of the Wil? Who cõmitted to thẽ th'adminiſtratiõ of the Kings goods and chattles? When, and to whome haue they brought in the Inuẽtory of the ſame? Who examined the witneſſes vpon their othe, for the tenour and trueth of the ſaid Teſtamẽt? Namely vpon the ſignement of the Kinges hand, wherein only conſiſteth the weight of no leſſe, then of the Croune it ſelf: where, or in what ſpiritual or temporal Courte may one find their depoſitions? But it were a very hard thing, to finde that, that (as farre as men can learne) neuer was.

No order taken for the probate of the ſuppoſed vvil.

And yet if the matter were ſo plaine, ſo good and ſo ſound, as theſe men beare vs in hand, if the original Teſtamẽt had ben ſuch, as might haue biddẽ the touchſtone, the trial the light and the ſight of the worlde: why did not they, that enioyed moſt commoditie

therby (and, for the ſway and authorite they bare, might and ought beſt to haue done it) take cõuenient and ſure order, that th'original might hane ben duely and ſafely preſerued, or at the leaſt the ordinarie Probate, which is in euery poore mans Teſtament diligẽtly obſerued, might haue ben procured or ſene, one or other autẽtical Inſtrumẽt therof reſerued? The Aduerſaries thẽſelues ſee wel inough, yea and are faine to cõfeſſe theſe defectes. But to helpe this miſchief, they wold faine haue the Enrolmẽt in the Chancerie to be taken for a ſufficient Probate, by cauſe (as they ſay) both the ſpiritual and temporal authoritie did concurre in the Kings perſon.

The enrollement in the chancerie is not a probate.

Yet do they know wel inough, that this plaiſter wil not cure the ſore, and that this is but a poore helpe and a ſhift. For neither the Letters Patents, nor th'Enrolmẽt may in any wiſe be counted a ſufficient Probate. The Chãcerie is not the Court or ordinarie place for the probate of Willes, nor the Rolles for recording theſame. Both muſt be done in the Spiritual Courts, where th'Executours alſo muſt be impleaded, and geue their accompt, where the weakenes or ſtrength of the Wil muſt be tried, the witneſſes examined, finally

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the probate, and al other thinges thereto requiſite, diſpatched. Or if it may be done by any other perſon: yet muſt his authoritie be ſhewed. The probate and al thinges muſt be done accordingly. And among other things the vſual clauſe of *Saluo iure cuiuſcunq;*, muſt not be omitted. Which things, I am aſſured, the recording in the Chãcerie cãnot import.

But this caution and prouiſo of *Saluo iure cuiuſcunque* (which is moſt cõformable to al law and reaſon) did litle ſerue ſome mens turne. And therefore there was one other caution and prouiſo: that though the pooreſt mans Teſtamẽt in al England hath this prouiſo at the probate of the ſame: yet for this Teſtament, the weightieſt, I trow, that euer was made in England: no ſuche probate or clauſe can be found, either in the one, or the other Court. Yet we nedes muſt, al this notwithſtanding, be borne in hande, and borne doune, that there was a Teſtamẽt and Wil, formably framed, according to the purpoſe and effect of the ſtatute, yet muſt the right of th'imperial Croune of Englãd be cõueied and caried away with the color and ſhadow only of a Wil. I ſay, the ſhadow only, by reaſon of another coniecture and preſumptiõ,

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whiche I ſhal tel you of. Whiche is ſo liuely and effectual, that I verily ſuppoſe, it wil be very harde for any man, by any good and probable reaſon, to anſwere and auoide the ſame. And is ſo important and vehemēt, that this only might ſeeme, vtterly to deſtroie al the Aduerſaries coniectural prouffes, cōcerning the maintenance of this ſuppoſed Wil.

We ſay therfore and affirme, that in caſe there had ben any good and ſure helpe and handfaſt, to take and hold the Croune for the heirs of Lady Francis by the ſaid Wil: that the faction, that vniuſtly intruded the Lady Iane, eldeſt daughter to the ſaid Lady Frācis to the poſſeſsion of the Croune, would neuer haue omitted to take, receaue and imbrace the occaſiō and benefit therof to them preſently offered. They neither would, nor could haue ben driuen, to ſo harde and bare a ſhifte, as to colour their vſurpation againſt the Late Queene Marie only, and her Siſter Elizabeth, with the Letters Patents of King Edward the ſixt, and with the cōſent of ſuch as they had procured. Which King by law had no autoritie (as it is notorious) to make any limitatiō and aſsignation of the Croune otherwiſe then the commō law doth diſpoſe it. It

A great preſumption againſt the ſuppoſed vvil, for

it. It was neede for them, I ſay, as they procured ſuche Letters Patentes, ſo to haue ſet forth alſo the ſaid pretenſed Wil, if ther had ben then any ſuch Wil in deede ſufficiently and dewly to be proued, as is now ſurmiſed there was. The Recorde of the ſaid ſurmiſed Wil was in the Chãcerie, which they might haue vſed with the pretenſed witneſſes, and with the original pretẽſed Wil, and with al other things therto belõging to their beſt aduantage. It can not be thought, that either they were ignorãt of it, or that they would forbeare and forgoe ſo greate a commoditie offered, and ſuch a plauſible pretext of their pretẽſed vſurpatiõ, bearing the contenance and authoritie of the Kings Wil, and of the whole Parlament, for the excluſion of the Quene of Scotland and others of the nerer royal blood. Neither can it be ſaid, that the Letters Patentes were made, as it were for a ſtrõger corroboratiõ and cõfirmatiõ only of the ſaid pretenſed Wil: for that there is not ſo much as one worde in their whole pretẽſed proclamation for the ſuppoſed right of the ſaid Lady Iane, by the force of that ſurmiſed Wil: whereby it might any thing appeare, that king Henry the eight made any

that the late pretenſed Q. Iane did not vſe the benefit of the ſame againſt the Q. of Scotland and others.

See the proclamation made the x. of Iulie the firſt yeare of her pretenſed reigne.

manner

manner of limitation or aſsignation of the Croune to the heires of the Lady Francis. Wherevpon it may wel be gathered, that either they knew of no ſuche limitation to the children of the Lady Francis by the ſaid ſuppoſed Will, or toke it to be ſuch, as could geue no good and lawful force and ſtrēgth, to ayde and mainteine their vſurpation for the manifeſt forgerie of the ſame. And therfore they purpoſely (for, ignorance can not be pretended in them) kepte backe and ſuppreſſed in the ſaid Letters Patentes this pretenſed limitation ſurmiſed to be made for the childrē of the ſaid Lady Francis. Which neuertheleſſe the Aduerſaries do now with ſo great and vehement aſſeueration blowe into al mens eares. which is vtterly reiected and ouerthrowē, and it were by nothing els but by this Proclamation for the pretenſed Title of the ſaid Lady Iane. So that we nede to trauaile no farther for any more proufe againſt the ſaid aſſeueration.

But yet in caſe any man do loke for any other, and more perſuaſiō and proufe, which as I ſaid, neede not: ô the great prouidēce of God, ô his great fauour and goodnes to this Realme, of the which it hath bene ſaid: *Re-*

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gnum Anglia, eſt regnum Dei, and that God hath euer had a ſpecial care of it: ô his great goodnes, I ſay, to this Realme euen in this caſe alſo. For he hath opened and brought to light the very truth of the matter, which is burſt out, though neuer ſo craftily ſuppreſſed and kept vnder. We ſay then, that the King neuer ſigned the pretenſed Will with his owne hande, neither do we ſay it by bare hearſay, or gather it by our former coniectures and preſumptions only, though very effectual and probable, but by good and hable witneſſes, that auouche and iuſtifie of their owne certaine knowledge. that the Stampe onely was put to the ſaid Will, and that euen when the King him ſelfe was now dead, or dying and paſt al remẽbrance. Polid. lib. 8.

The Lorde Paget being one of the priuie Counſaile with Queene Marie, of his owne freewil and godly motion, for the honour of the Realme, for reuerence of truth and iuſtice, though in the facte him ſelfe culpable, and in a manner thereto by great authoritie forced, did firſt of al men diſcloſe the matter, firſt to the ſaid Counſaile, and then before the whole Parlament. Sir Edward Moũtegue alſo the chief Iuſtice, that

The forgerie of this ſuppoſed will diſcloſed before the Parlament by the L. Paget.

was

was priuie and preſent at the ſaide doinges, did confeſſe the ſame, as wel before the Counſaile, as before the Parlamēt. Yea, William Clarke, aſcribed among other pretēſed witneſſes, cōfeſſed the premiſſes to be true. And that him ſelf put the ſtampe to the ſaid Wil, and afterward purchaſed his Charter of pardon for the ſaid fact.

Vpon the which depoſitions wel and aduiſedly weied and pondered, Queene Marie with the aduiſe of her Counſaile, to the honour of God, and this Realm, to the maintenance of trueth and iuſtice, and the rightful ſucceſsion of the Croune, for the eſchewing of many foule miſchieffes, that might vpon this forgerie enſue, cauſed the Recorde of the ſaid forged Wil remaining in the Chancerie, to be be cancelled, defaced and aboliſhed, as not worthy to remaine among the true and ſincere Recordes of this noble Realme. Which her noble fact deſerueth īmortalitie of eternal prayſe and fame, no leſſe, then the fact of the Romaines that aboliſhed the name and memorie of the Tarquinians, for the foule act of *Sextus Tarquinius* in deſiling Lucretia: No leſſe, then the fact of the Epheſians, who made a lawe, that the name

A vvorthy deede for à Prince to cancell falſe Recordes.

Cicero. 3. offic.

of the

of the wicked Heroſtratus ſhould neuer be recorded in the bookes of any their Hiſtoriographers: No leſſe then the fact of the familie of the Manlians at Rome, taking a ſoléne othe, that none amõg them ſhould euer be called *Capitolinus*, by cauſe *M. Manlius Capitolinus* had ſought to oppreſſe his Coũtrey with tyrãnie. And to come nerer home, no leſſe then our forefathers deſerued, whiche quite raſed out of the yeares and times the memorie and name of the wicked Apoſtates Oſricus and Eanfridus, numbring their time vnder the reigne of the good king Oſwald.

Sueton. de uiris illuſtrib.

Bed. lib. 3. hiſtor. Eccleſiaſt. c. 1.

The Aduerſaries therefore are much to be blamed, going about to ſtaine and blotte the memorie of the ſaid Quene and Magiſtrats, as though they had done this thing diſorderly, and as though there had bene ſome ſpecial commoditie therein to them: which is apparently falſe. For as the ſaid abolition was nothing beneficial to other Magiſtrats: ſo if it hadde bene a true and an vndoubted Will, the ſaid Queene woulde neuer haue cauſed it to be cancelled, as wel for her honour and conſcience ſake, as for priuate reſpect, ſeeing her owne royall eſtate was by the ſame ſet foorth and confirmed.

Yet

Yet would they faine blemiſh and diſgrace the teſtimonie of the ſaid Lorde Paget, and S. Edward Moũtigue. They ſet againſt them eleuen witneſſes, thinking to matche and ouermatche them with the number.

But here it muſte be remembred, that though they be eleuẽ, yet they are to ſlẽder and weake for the weight and importance of the matter. It is againe to be remembred, that often times the lawe doth as wel weigh the credit, as number the perſons of the witneſſes. *Aliás* (ſaith Caliſtratus) *numerus, aliâs dignitas & authoritas confirmat rei, de qua agitur, fidem.* According to this, ſaith alſo Arcadius: *Confirmabit Iudex motum animi ſui ex argumentis & teſtimonijs, quæ rei aptiora, & vero proximiora eſſe compererit. Non enim ad multitudinem reſpicere oportet, ſed ad ſinceram teſtimoniorum fidem & teſtimonia, quibus potius lux veritatis aſſiſtit.*

L. teſtiũ. ff. de teſtibus
L. Ob carnem ibid.

It hath not lightly bene heard or ſene, that men of ſuche ſtate and vocation in ſo great and weightie a cauſe would incurre firſt the diſpleaſure of God, then of their Prince, and of ſome other of the beſt ſorte, if their depoſitions were vntrue, and would purchaſe them ſelues diſhonour, ſlaunder

and infamie: yea diſcloſe their owne ſhame to their owne no manner of way hoped cõmoditie, nor to the commoditie of other their frendes, or diſcommoditie and hurte of their enemies. This ſufficiently doth purge them (I wil not ſay, of their fact and fault) from al ſiniſter ſuſpicion for this their depoſition and teſtimonie, their depoſition proceding, as it plainly ſeemeth, from no affection, corruption or partialitie, but from a zeale to the trueth, and to the honour of the Realme. And though perchance, if they had bene thereof iudicially conuicted and condemned, and had not by dew penance themſelues reformed, ſome exceptiõs might haue bene layed againſt them by any partie iudicially cõuented for his better aduantage: yet as the caſe ſtandeth nowe, there is no cauſe in the worlde, to diſcredit their teſtimonie: yea and by the way of accuſation alſo ſuch perſons, as be otherwiſe diſhabled, are in treaſon and other publike matters, touching the ſtate, enhabled both to accuſe, and teſtifie.

No iuſt cauſe to repel the teſtimonie of the L. Paget and others.

L. Famoſi ff. ad l. iul. maieſ. l. muliere. ff. de accuſat.

As for the eleuen witneſſes, the beſte of of them Sir Iohn Gates, we know, by what meanes he is departed out of this life. One

other, the ſaid William Clarke is ſo gone from them, that he geueth good cauſe, to miſdeeme and miſtruſt the whole matter. Howe many of the reſidue liue, I know not. To whom perchaunce ſome thing might be ſaid, if we once knowe, what them ſelues ſay. Which ſeeing it doth not by authentical recorde appeare, bare names of dumme witneſſes can in no wiſe hinder and deface ſo ſolemne a teſtimonie of the foreſaid L. Paget and Sir Edwarde Mountague. Neither is the difficultie ſo great, as the Aduerſaries pretend, in prouing *Negatiuam facti*. Which as we graunt it to be true, when it ſtandeth within the limites of a mere negatiue: ſo being reſtrained and referred to time and place, may be as wel proued, as the affirmatiue. It appeareth now then by the premiſſes, that the Aduerſaries argumentes, whereby they would weaken and diſcredit the teſtimonie, either of the witneſſes, or of the executours, that haue or may come in againſt the ſaid pretenſed Wil, are but of ſmal force and ſtrength. And eſpecially their ſlender exaggeration by a ſuperficial Rhetorike enforced. Whereby they would abuſe the ignorance of the people, and make them

Hovv a negatiue may be proued.

Gloſſ. & Doct. c bona de elect

them beleue, that there was no good and ſubſtantial prouffe brought foorth againſt the forgerie of this ſuppoſed Wil, bycauſe the vntrueth of the ſame was not preached at Poules Croſſe, and declared in al open places and aſſembles through the Realme: when they knowe wel inough, that there was no neceſsitie ſo to doe. And that it was notoriouſly knowen, by reaſon it was diſcloſed by the ſaide Lorde Paget, as wel to the Counſaile, as to the higher and lower houſe of the Parlament. And the foreſaid forged Recorde in the Chancerie there-vpon worthely defaced, and aboliſhed. The diſcloſing whereof ſeing it came foorth by ſuch, and in ſuch ſort and order, as we haue ſpecified: as it doth nothing deface or blemiſh the teſtimonie geuen againſt the ſaid ſuppoſed Wil, whether it were of any of the witneſſes, or executours: ſo is ther no nede at al, why any other witneſſes, byſides thoſe that haue already impugned the ſame, ſhould be now farther producted.

Hovv and vvhen the later teſtimonie is to be accepted before the former.

I denie not, but that if any ſuch witneſſe or Executour had vpon his othe before a lawful Iudge, depoſed of his owne certaine notice and knoweledge, that the ſaid Wil

was signed with the Kinges owne hande: in case he should afterward contrarie and reuoke this his solemne deposition, it ought not lightly to be discredited for any suche contradiction afterward happening. But, as I haue said, suche authentical and ordinarie examinations and depositions we find not, nor yet heare of any such so passed. Now contrariwise if any of the said witnesses or executours haue or shal before a competēt Iudge, especially not producted of any partie, or against any partie for any priuate suite commenced, but, as I haue said, moued of conscience only, and of a zeale to truth, and to the honour of God and the Realme, freely and voluntarie discouer and detecte such forgerie (although perchance it toucheth them selues for some thing done or said of them to the contrary, or being called by the said cōpetent Iudge, haue or shal declare and testifie any thing against the same) this later testimonie may be wel credited by good reason and law.

Whereas they would nowe inferre, that either this pretensed Will was King Henries Wil, or that he made none at al: I doo not (as I haue said) entende, nor neede not curiously

curiouſly to examine and diſcuſſe this thing, as a mater not apperteining to our principal purpoſe. And wel it may be, that he made a Wil conteining the whole tenour of this pretenſed Wil (ſauing for the limitation of the Croune) and that theſe ſuppoſed witneſſes were preſent, either when he ſubſcribed the ſame with his owne hand, or when by his cõmaundment the Stampe (of which and of his owne hand, the common ſort of men make no difference, as in dede in diuers other caſes there is no difference, whiche theſe witneſſes might take to be as it were his owne hand) was ſet to the Wil.

This, I ſay, might after ſome ſort ſo be. And yet this notwithſtãding there might be (as there was in deede) an other Wil touching the pretẽſed limitation of the Croune by the Kinges owne hande counterfeyted and ſuborned after his death falſly and coulorably, bearing the coũtenance of his owne hand, and of the pretenſed witneſſes names. How ſo euer it be, it is but to ſmal purpoſe, to goe about any full and exquiſite anſwere touching this point, ſeeing that neither the original ſurmiſed Wil, whereof theſe witneſſes are ſuppoſed to be priuy, is extant, nor

their depoſitions any where appeare, nor yet that it appeareth, that euer they were (as we haue ſaid) iudicially examined.

Seeing nowe then, that if it ſo falleth out, that the principal Wil, and that that was by the great Seale exemplified, and in the Chācery recorded, had not (at leaſt touching the clauſe of limitation and aſsignment of the Croune) the Kings hand to it: we neede not nor wil not tarie about certain ſcrolles and copies of the ſaid Wil, that the Aduerſaries pretend to haue ben either writte, or ſigned with his hand. A kingdom is to heauy to be ſo eaſely caried away by ſuche ſcrolles and copies. When al this faileth, the Aduerſaries haue yet one ſhift left for the laſt caſt. They vrge the equitie of the matter and the mind of the Parlament. Which is, they ſay, accompliſhed and ſatisfied, by making this aſsignation for the eſtabliſhing of the ſucceſsion, and prouiding, that the Realme ſhould not be left void of a Gouernour. And therefore we muſt not ſubuert the ſtatute, in cauilling for the defect of the Kings hand: forasmuch as the Parlament might haue had authoriſed his conſent only, without any hand writing. Which as I doe not denie, ſo in theſe great

affaires and ſo ample a commiſsion, in ſuche abſolute authoritie geuen to him, it was prouidently and neceſſarily foreſene, to binde the Acte to the Kings owne hand, for auoyding al ſiniſter and euil dealing, the whiche the Aduerſaries would haue vs in no caſe to miſdoubt or miſtruſt in this Wil. Whereas the notoriouſnes of the fact, and the lamētable euent of things do openly declare the ſame, and pitifully crieth out againſt it.

Neither wil we graunt to them, that the minde and purpoſe of the Parlament is ſatiſfied, for ſuch cauſes, as we haue and ſhall hereafter more largely declare. And if it were otherwiſe true, yet doth this only defect of the Kinges hand breake and infringe the whole Acte. For this is a ſtatute correctorie, and derogatorie to the common courſe of the Lawe, as cutting away the ſucceſsiō of the lawful and true inheritours. It is alſo, as appeareth by the tenour of the ſame, a moſt greuouſe penal Law, and therfore we may not ſhift or alter the wordes of the law. Neither may we ſupply the māner and doing of the Acte preſcribed, by any other Acte equiualent. So that albe it in ſome other thing the Stampe or the Kinges

Why the ſtampe cā not counteruaile the Kinges hand in this caſe.

certaine and knowen conſente may counterpaiſe his hande: yet, as the caſe ſtandeth here, it wil not ſerue the turne, by reaſon there is a preciſe order and forme preſcribed and appointed. Wherfore if by a ſtatute of a Citie, there be certaine perſons appointed to do a certaine acte, and the whole people do the ſame acte in the preſence of the the ſaid perſons: the acte by the iudgement of learned Ciuilians is vitious, and of no valewe: yea though the reaſon of the lawe ceaſe, yet muſt the forme be obſerued. For it is a rule and a Maxime, that wher the law appointeth and preſcribeth a certaine plat forme, whereby the Acte muſt be bound and tyed: in that caſe though the reaſon of the law ceaſſe, yet is the acte voyd and naught.

Ioan Andr. in adit. ſpecul tit. de requiſit. conſul. ad finem.

L. Si fundus ff. de rebus eorum: & de rebus Eccleſiæ in 6.

And whereas the Aduerſaries obiecte againſt this rule, the Parlamentes made by Queene Marie, without the vſual ſtyle called and ſomoned: this obiection may ſone be anſwered. For it may ſone appeare to all them, that reade and pervſe the ſaid ſtatute of *Anno 35. Henrici octaui*, conteining the ſaid ſtyle, that by any eſpecial wordes therin mentioned, it is not there limited and appointed, that the forme of the ſtyle therin

An anſwere to the aduerſaries, touchinge Actes of Parlament alleaged to proue, that the Kinges owne hād

ſet

ſette foorth ſhould be obſerued in euery Writ. And therfore not to be cõpared vnto the ſaid ſtatutes of *28.* and *35. Henrici octaui*, wherein by ſpecial wordes one expreſſe forme and order for the limiting of the ſucceſsion of the Croune by the King, is declared and ſet forth. vvas not neceſſarie to the ſuppoſed vvil.

Byſides that, the ſaid Writtes being made both according to the auncient forme of the Regeſter, and alſo by expreſſe commaundement of the Prince, vtterly refuſing the ſaid ſtyle, could neither be derogatorie to the ſaid Queenes Maieſtie and her Croune, nor meaning of the ſaid ſtatute. Cõcerning the ſaid ſtyle, and for a final and ful anſwere vnto this matter: it is to be noted, that the Writts being th'Actes of the Court, though they wante the preſcript fourme ſet foorth either by the common lawe, or ſtatute: yet are not they, nor the iudgements ſubſequẽt thervpon abated or voide, but only abatable and voidable by exception of the partie by iudgemente of the Courte. For if the partie without any exception doo admitte the forme of the ſaid Writte, and pleade vnto the matter, whervpon the Court doth procede: then doth the Writte, and the iudgement

18. E. 3. *fol.* 30. 3. H. 4. *fol.* 3. & 11. 11. H. 4. *fol.* 67. 9. H. 6. *fo.* 6. 19. H. 6. *fo.* 7. *et* 10

35.H.6.fol. 12.10.H.6. fol.26.3.H. 6. fol.8.33. E.3.fo.13. Vide Priſot.33.H.6. fol.35.

ment therevpon following remaine good and effectual in lawe. And therefore admitting, that the ſaid ſtatute of 35.H.8. had by ſpecial wordes appointed the ſaid ſtyle to be put in euery Writte, and that for that cauſe the ſaid Writtes of Somons were vitious, wanting their preſcript forme: yet when the parties vnto the ſaid Writtes had admitted them for good, both by their electiō, and alſo by their appearence vpon the ſame: the law doth admit the ſaid Writtes and al actes ſubſequent vpon the ſame, to be good and effectual. And yet this maketh no prouffe, that therfore the ſaid ſuppoſed Wil, wanting the preſcript order and fourme, ſhould likewiſe be good and effectual in law.

For as touching ſpecialties, eſtates and cōueiances, or any other external acte to be done or made by any perſon, whoſe forme and order is preſcribed, either by the cōmon law, or by ſtatute: if they want any part of their preſcript forme, they are accōpted in law to be of no validitie or effect. As for example: the law doth appoint euery Specialtie or Deede to be made, either in the firſt perſon, or in the third perſon. Therefore if part of a Deede be made in the firſt perſon,

9.H.6. fol. 25.25.H.6. fol 34. 40. E.3.fol.2.

and

and the residue in the thirde person: that Dede is not effectual, but void in the Law. Bysides that, the law hath appointed, that in euery Deede mention should be made, that the partie hath putto his Seale to the same. If therefore any Deede doth want that special clause and mention, although the partie in deede hath put his Seale vnto the same: yet is that Dede or Specialtie void in law.

40.E.3.fol. 35.21.E.4. fol.97.7.H. 7.fol.15.

So likewise the law geueth authoritie to the Lorde, to distraine vpon the land holden of him for his rentes and seruices dewe for the same. And farther doth appoint, to carie or driue the same distresse vnto the pound, there to remaine as a gage in law for his said rents and seruices. If the Lord shal either distraine his Tenāt out of his Fee or Seignory, or if he shal labour and occupie the Chatles distrained: the distresse so takē by him is iniurious and wrongful in law, forasmuch as he hath not done according to the prescribed order of the law. The statute made *An.32. H.8.* geueth authoritie vnto Tenant in taile, and to others being seased of land in the right of their wiues or Churches, to make leases of the same. Wherin also a prescript order and forme for the same is set foorth. If any of

9.E.4.fo.2. 22.E.4.fo. 47. 29.H. 6.fol.6.29. lib.Assis.P. 64.

the said

the ſaid perſons ſhal make any Leaſe, wherin he doth not obſerue the ſame preſcribed order in all pointes, the ſame Leaſe is not warranted in any point by the ſaid ſtatute.

Likewiſe the ſtatute made in Anno 27. *Henrici octaui*, of Bargaines and ſales of land appointeth a forme and order for the ſame, that they muſt be by writing, indēted, ſealed and enrolled within ſix monethes next after the dates of the ſame writings. If any bargaine and ſale of land be made, wherein any of the thinges appointed by the ſaid ſtatute are omitted, the ſame is vitious and voide in the lawe. So likewiſe the ſtatute made in Anno 32. H. 8. geueth auctoritie, to diſpoſe landes and Teſtamentes by laſt Wil and Teſtament in writing. If a man do demiſe his lande by his laſt Wil and Teſtament nuncupatiue without writing, this demiſe is inſufcient in law, and not warranted by the ſaid ſtatute.

27. H. 8. c. 10.

32. H. 8. c. 1.

We leaue of a number of like caſes, that we might multiplie in the prouffe of this matter: wherein we haue taried the longer, bycauſe th'Aduerſaries make ſo great a coūtenance therevpon: and bycauſe al vnder one, it may ſerue for the anſwere alſo touching

ching the Kinges royal aſſente to be geuen to Parlamentes by his Letters Patentes ſigned with his hande, which is nothing elſe but a declaration and affirmãce of the common lawe, and no newe authoritie geuen to him, to do that he could not doo before, or any forme preſcribed to bind him vnto. Beſides that, in this caſe there is no feare in the worlde of forging and counterfeyting the Kinges hande: whereas in the Teſtamentarie cauſe it is farre otherwiſe, as the worlde knoweth, and dayly experience teacheth. And ſo withal do we conclude, that by reaſon this ſurmiſed Wil was not ſigned with the Kinges hand: it can not any way hurt or hinder the iuſte right and claime of the Quene of Scotland, to the ſucceſsion of the Croune of England.

Now ſuppoſing, that neither the L. Paget, nor Sir Edward Montague, and Willã Clarke had teſtified or publiſhed any thing to the infringing annd ouerthrowing of the Aduerſaries aſſertiõ, touching the ſigning of the ſaid Wil: yet is not therby the Queene of Scotlandes title altogether hindred. For ſhe yet hath her iuſt and lawfull defence for the oppugning of the ſaid aſſertion, as well

againſt

againſt the perſons and ſaying of the witneſſes, if any ſhal come foorth, as otherwiſe ſhee may iuſtly require the ſaid Wil to be brought forth to light, and eſpecially the ſigning of the ſame with the Kings hand, to be duely and conſideratly pondered, weyed and conferred. She hath her iuſt defence and exceptions, and muſt haue. And it were againſt al lawes, and the lawe of nature it ſelfe; to ſpoile her of the ſame. And all good reaſon geueth, that the ſaid original Wil ſtanding vppon the triall of the Kinges hande, be exhibited, that it may be compared with his other certaine and wel knowen hand writing. And that other things may be done requiſite in this behalfe.

But yet all this notwithſtanding, let vs nowe imagine and ſuppoſe, that the King him ſelfe, whoſe harte and hande were doubteleſſe farre from any ſuche doinges: lette vs yet, I ſay, admitte, that he had ſigned the ſaid Will with his owne hande. Yet for al that, the Aduerſaries perchance ſhal not finde, no not in this caſe, that the Queenes iuſte Title, right and intereſt doth any thing fayle or quayle. Or rather lette vs without any perchance ſay, the iuſtice

and

and equitie of her cauſe, and the inuincible force of trueth to be ſuch, that neither the Stampe, nor the Kinges owne hande can beare and beate it downe. Which thing we we ſpeake not without good probable and weightie reaſons.

The ſuppoſed vvil cā not preiudice the Q. of Scotlād, though it had ben ſigned vvith the Kinges ovvne hād

Neither do we at this time minde, to debate and diſcourſe, what power and autoritie, and how farre the Parlament hath it, in this and like caſes. Which perchance ſome other would here do. We wil only intermedle with other thinges, that reache not ſo farre, nor ſo high, and ſeeme in this our preſent queſtion worthy and neceſſarie to be conſidered.

And firſt, before we enter into other matters, we aſke this reaſonable and neceſſarie queſtiō, whether theſe general words, wherby this large and ample autoritie is cōueied to king Henry, muſt be as generally, and as amply taken, or be reſtrained by ſome māner of limitation and reſtrictiō agreable to ſuch mind and purpoſe of the Parlament, as muſt of very neceſsitie or great likelihod be conſtrued, to be the very mind and purpoſe of the ſaid Parlamēt. Ye wil ſay perchance, that the power and autoritie of aſsignatiō muſt be

taken

taken generally and abſolutely, without exception, ſauing for the outward ſigning of the Will. Trueth it is, there is nothing els expreſſed: but yet was there ſome thing els principally intended, and yet for al that, needed not to be ſpecified.

The outward maner was ſo ſpecially and preciſely appointed and ſpecified, to auoyde ſuſpitious dealing, to auoide corruption and forgery. And yet was the Wil good and effectual, without the Kinges hande. Yea and the aſsignatiō to, had ben good, had not that reſtrainte of the Kinges hande bene added by the Parlament. But for the qualification of the perſon to be limited and aſsigned, and ſo for the neceſſarie reſtriction and limitation of the wordes, were they neuer ſo large and ample: there is (though nothing were ſpoken thereof) an ordinary helpe and remedie. Otherwiſe, if the Realme had ben ſet ouer to a furious or a madde man, or to an idiote, or to ſome foraine and Mahometical Prince (and to ſuch a one our ſtories teſtifie that King Iohn would haue ſubmitted him ſelfe and his Realme) or to any other notorious incapable or vnhable perſon: the generalitie of the wordes ſeeme to beare it, but

Ther muſt needes be ſome qualification and reſtrait of the general vvordes of the ſtatute.

Matthæus Pariſienſis in Iohan.

the good minde and purpoſe of the Parlament, and mans reaſon doe in no wiſe beare it. If ye graunt, that theſe wordes muſt nedes haue ſome good and honeſt conſtructiō and interpretation, as reaſon doth force you to graunt it: yet wil I aſke farther, whether as the King cutte of in this pretenſed Wil the whole noble race of the eldeſt ſiſter, and the firſt iſſue of the yongeſt ſiſter: ſo if he had cutte of alſo al the offſpringes as wel of the ſaid yongeſt ſiſter, as of the remnante of the royal blood, and placed ſome, being not of the ſaid blood, and perchance otherwiſe vnable: this aſſignatiō had bene good and vailable in law, as conformable to reaſon, and to the mind and purpoſe of the Parlament? It were ſurely to great an abſurdity, to graūt it.

There muſt be therefore in this matter ſome reaſonable moderation and interpretatiō, as wel touching the perſons cōpreheēded within this aſſignation, and their qualities, and for the perſons alſo hauing right, and yet excluded, as for the manner of the doing of the Acte, and ſigning the Wil. For the king as King, could not diſpoſe the Croune by his Wil: and was in this behalfe but an Arbiter and Commiſsioner. Wherefore his doinges

taken generally and absolutely, without exception, sauing for the outward signing of the Will. Trueth it is, there is nothing els expressed: but yet was there some thing els principally intended, and yet for al that, needed not to be specified.

The outward maner was so specially and precisely appointed and specified, to auoyde suspitious dealing, to auoide corruption and forgery. And yet was the Wil good and effectual, without the Kinges hande. Yea and the assignatiō to, had ben good, had not that restrainte of the Kinges hande bene added by the Parlament. But for the qualification of the person to be limited and assigned, and so for the necessarie restriction and limitation of the wordes, were they neuer so large and ample: there is (though nothing were spoken thereof) an ordinary helpe and remedie. Otherwise, if the Realme had ben set ouer to a furious or a madde man, or to an idiote, or to some foraine and Mahometical Prince (and to such a one our stories testifie that King Iohn would haue submitted him selfe and his Realme) or to any other notorious incapable or vnhable person: the generalitie of the wordes seeme to beare it, but

Ther must needes be some qualification and restrait of the general vvordes of the statute.

Matthæus Parisiensis in Iohan.

the good minde and purpoſe of the Parlament, and mans reaſon doe in no wiſe beare it. If ye graunt, that theſe wordes muſt nedes haue ſome good and honeſt conſtructiō and interpretation, as reaſon doth force you to graunt it: yet wil I aſke farther, whether as the King cutte of in this pretenſed Wil the whole noble race of the eldeſt ſiſter, and the firſt iſſue of the yongeſt ſiſter: ſo if he had cutte of alſo al the offſpringes as wel of the ſaid yongeſt ſiſter, as of the remnante of the royal blood, and placed ſome, being not of the ſaid blood, and perchance otherwiſe vnable: this aſſignatiō had bene good and vailable in law, as conformable to reaſon, and to the mind and purpoſe of the Parlament? It were ſurely to great an abſurdity, to graūt it.

There muſt be therefore in this matter ſome reaſonable moderation and interpretatiō, as wel touching the perſons cōpreheēded within this aſſignation, and their qualities, and for the perſons alſo hauing right, and yet excluded, as for the manner of the doing of the Acte, and ſigning the Wil. For the king as King, could not diſpoſe the Croune by his Wil: and was in this behalfe but an Arbiter and Commiſsioner. Wherefore his doinges

muſt be directed and ruled by the lawe, and according to the good minde and meaning of thoſe, that gaue the authoritie. And what their minde was, it wil appeare well inough, euen in the ſtatute it ſelfe. It was for the auoiding of all ambiguities, doubtes and diuiſions, touching the Succeſsion. They putte theyr whole truſte vppon the King, as one, whom they thought moſt earneſtly to minde the wealth of the Realme, as one that woulde, and could beſt and moſt prudently conſider and weigh the matter of the Succeſsion, and prouide for the ſame accordingly.

If the doinges of the King do not plainely and euidently tende to this ende and ſcope, if a zealous minde to the common Wealth, if prudence and wiſdome did not rule and meaſure al theſe doinges, but contrariewiſe partial affection and diſpleaſure, if this arbitrement putteth not away al contentions and ſtriffes, if the mind and purpoſe of the honorable Parlament be not ſatisfied, if there be diſhonorable deuiſes and aſsignmentes of the Croune in this Wil and Teſtament, if there be a new Succeſsion vnnaturally deuiſed, finally if this be not a Teſta-

ment,

ment and laſt Wil, ſuch as *Modeſtinus* deſineth: *Teſtamentum eſt iuſta voluntatis noſtræ ſententia de eo, quod quis poſt mortem ſuam fieri velit*: then though the Kinges hand were put to it, the matter goeth not altogether ſo wel and ſo ſmothe. But that there is good and great cauſe farther to conſider and debate vpon it, whether it be ſo, or no: let the indifferent, when they haue wel thought vpon it, iudge accordingly.

L. 1. ff. qui Teſtamenta facere. The definition of a Teſtamēt.

The Aduerſaries them ſelues can not altogether denie, but that this Teſtament is not correſpondent to ſuch expectation, as men worthely ſhould haue of it. Whiche thing they do plainly confeſſe. For in vrging their preſumptions, whereof we haue ſpokē, and minding to proue, that this wil, whiche they ſay is commonly called King Henries Wil, was no new Wil deuiſed in his ſicknes, but euen the very ſame, wherof (as they ſay) were diuers olde copies: they inferre theſe wordes, ſaying thus:

For if it be a newe Wil then deuiſed, who could thinke, that either him ſelfe would, or any man durſt haue moued him, to put therin ſo many thinges contrary to his honour? Much leſſe durſt they themſelues deuiſe any new ſucceſſiō,

or moue him to alter it, otherwiſe then they foũd it, When they ſaw, that naturally it could not be otherwiſe diſpoſed. Wherein they ſay very truely. For it is certaine, that not only the common lawe of this Realme, but nature it ſelfe telleth vs, that the Queene of Scotlãd (after the ſaid Kinges children) is the next and rightful Heire of the Croune. Wherefore the King, if he had excluded her, he had done an vnnatural acte. Ye wil ſay, he had ſome cauſe to doo this, by reaſon ſhe was a forainer, and borne out of the Realm. Yet this notwithſtanding he did very vnnaturally, yea vnaduiſedly, inconſiderately and wrongfully, and to the great preiudice and danger of his owne Title to the Croune of France, as we haue already declared.

And moreouer it is wel to be weighed, that reaſon, and equitie, and *Iu. Gẽtium* doth require and craue, that as the Kings of this Realme would thinke them ſelues to be iniuriouſly handled and openly wronged, if they mariyng with the heires of Spaine, Scotland or any other Countrey (where the ſucceſsion of the Croune deuolueth to the woman) were ſhutte out, and barred from

their

theyr ſaid right dewe to them by the wiues (as we haue ſaid): ſo likewiſe they ought to thinke of women of their royal blood, that marie in Scotland, that they may wel iudge and take them ſelues much iniured, vnnaturally and wrongfully dealt withall, to be thruſte from the ſucceſsion of this Croune, being thereto called by the nexte proximitie of the royal blood. And ſuch deuolutiõs of other Kingdoms to the Croune of England by foraine mariage, might by poſsibilitie often times haue chaunced, and was euen nowe in this our time very like to haue chanced for Scotland, if the intended marriage with the Queene of Scotland that now is, and the late King Edward the ſixt with his longer life, and ſome iſſue had takẽ place.

But now, that ſhe is no ſuche forainer, as is not capable of the Croune, we haue at large already diſcuſſed. Yea I wil now ſay farther, that ſuppoſing the Parlament minded, to exclude her, and might rightfully ſo doe, and that the King by vertue of this ſtatute did exclude her in his ſuppoſed Wil: yet is ſhe not a plaine forainer, and incapable of the Croune. For if the lawfull heires of the ſaid Ladie Francis, and of the

Ladie Elenour ſhould happē to faile (which ſeeme now to faile, at the leaſt in the Ladie Katherin and her iſſue, for whoſe title, great ſturre hath lately ben made, by reaſon of a late ſentence definitiue, geuen againſt her pretenſed mariage with the Earle of Herford) then is there no ſtay or ſtoppe, either by the Parlament, or by the ſuppoſed Will, but that ſhe the ſaid Queene of Scotlande, and her Heires, may haue and obteine their iuſt Title and claime. For by the ſaid pretenſed Wil it is limited, that for default of the lawfull Heyres of the ſaid Ladie Francis and Elenour, the Croune ſhall remaine and come to the next rightful Heires.

But if ſhe ſhal be ſaid to be a forainer for the time, for the induction of farther argument: then what ſaye the Aduerſaries to my Ladie Leneux, borne at Herbottel in England, and from thirtene yeares of age brought vppe alſo in England, and commonly taken and reputed as well of the King and Nobilitie, as of other, the lawefully Neece of the ſaid King? Yea to turne nowe to the other Siſter of the King, maried to Charles Brandon Duke of Suffolke, and her children, the Ladie Francis, and the

Ladie

Ladie Elenour: why are they also disherited? Surely, if there be no iust cause, neither in the Lady Leneux, nor in the other; it seemeth the King hath made a plaine Donatiue of the Croune. Whiche thinge whether he could doe, or whether it be conformable to the expectation of the Parlament, or for the Kinges honour, or for the honour for the Realme, I leaue it to the farther consideration of other.

Nowe, what causes should moue the Kinge, to shutte them out by his pretensed Will from the Title of the Croune: I minde not, nor neede not (especially seeing I take no notice of any such Wil, touching the limitation of the said Croune) here to to prosecute or examine.

Yet am I not ignorant, what impedimentes many doo talke of, and some as well by printed, as vnprinted Bookes, doe write of. Wherein I will not take vppon me any asseueration, any resolution or iudgement.

Thus only will I propound, as it were by the way of consideration, duely and depely to be wayed and thought vpon: that is, for as muche as the benefitte of this

ſurmiſed Wil tendeth to the extruſion of the Queene of Scotland, and others altogether, to the iſſue of the French Queene: whether in caſe the King had no cauſe to be offended with his ſiſters the Frenche Queenes children (as the Aduerſaries themſelues confeſſe he had not, and that there was no lawful impediment in them, to take the ſucceſsion of the Croune) it were any thing reaſonable, or euer was once meant of the Parlament, that the King without cauſe ſhould diſherite and exclude them from the Title of the Croune. On th'other ſide, if ther were any ſuch impediment (whereof this ſurmiſed Wil geueth out a great ſuſpicion) it is to be conſidered, whether it ſtandeth with reaſon and iuſtice, with the honour of the King, and the whole Realme, or with the minde, purpoſe and intente of the ſaid Parlament, that the King ſhould not onely fruſtrate and exclude ſuche, whoſe right by the common lawe is moſte euidente and notoriouſe, but call and ſubſtitute ſuche other, as by the ſame lawe are plainely excluded. In conſideration whereof many notable Rules of the Ciuil lawe doo concurre.

L. ſi pater. ff. Que in frau. credit. L. fil. famil. ff. de Donat.

First, that who ſoeuer geueth any man a general authoritie, to do any thing, ſeemeth not to geue him authoritie, to do that thing, which he would not haue graunted, if his minde therein had bene ſeuerally and ſpecially aſked and required. Againe, general wordes either of the Teſtatours, or of ſuche as make any contract, and eſpecially of ſtatutes, touching any perſons, to doe or enioy any thing, ought to be reſtrained and referred to hable, mete, and capable perſons only.

L.1. c quæres pign l. obligatione. ff. de pigno. c in genera. de Regum iuris in 6. L. quidã. ff. de uerb. ſig. L. ut gradã. §. 1. de numer. & honor.

It is furthermore a rule and a Principle, that ſtatutes muſt be ruled, meaſured and interpreted, according to the minde and direction of the general and common lawe. Wherefore the King in limiting the ſucceſsion of the Croune in this ſorte, as is pretended, ſeemeth not to anſwere and ſatisfie the expectation of the Parlament: putting the caſe there were any ſuch ſurmiſed impediment, as alſo on the other ſide likewiſe, if there were no ſuch ſuppoſed impedimẽt.

L. permittẽdo ciũ notatis. ff. de iure dotiũ.

In geuing general authoritie, that ſeemeth not to be compriſed, that the partie vvould not haue graunted, being ſpecially demaunded.

For here an other rule muſt be regarded: whiche is, that in Teſtaments, Contractes, and namely in ſtatutes, the generalitie of wordes muſt be gently and ciuilly moderated, and meaſured by the common law, and reſtai-

General voordes muſt be referred to hable perſons.

L. 2. c. de Nopal.

L. fin. §. in computatione. De iure deliber. & ibi notat Alciat. in l. 1. de verb. significat.

restrained, when so euer any man should by that generalitie take any dãmage and hurte vndeseruedly. Yea, the Statute shal rather in that case ceasse and quaile, and be taken as void. As for example, it appereth by the Ciuil law, that if it be enacted by statute in some Cities, that noman shal pleade against an Instrument, no not the Executour: yet this notwithstanding, if th' Executour make a true and perfect Inuentarie of the goodes of the Testatour, if he deale faithfully and truely, rather then he should wrongfully and without cause paie the Testatours debt of his owne, he may come and pleade against the Instrument. Wherefore the Kinges doings seeme either muche defectiue in the said Ladie Francis, and Ladie Elenour, or much excessiue in their children. And so though he had signed the said Wil with his hand: yet the said doings seme not cõformable to the mind and purpose of the Parlamẽt.

We wil now go forward, and propound other great and graue cõsiderations seruing our said purpose and intent. Whereof one is that in limiting the Croune vntõ the heires of the bodie of the Ladie Francis, the same Ladie then, and so long after liuing, the said

King

King did not appoint the Succeſsion of the Croune, according to th'order and meaning of the honourable Parlament: foraſmuch as the ſaid Acte of Parlament gaue to him authoritie, to limite and appoint the Croune to ſuch perſon, or perſons in reuerſion or remainder, as ſhould pleaſe his Highnes. Meaning thereby ſome perſon certaine, of whom the people might haue certaine knowledge and vnderſtanding, after the death of King Henrie the eight. Which perſons certaine the heires of the Ladie Francis could not by any meanes be intended: foraſmuch as the ſaid Ladie Francis was then liuing, and therfore could then haue no heires at al. By reaſon wherof the people of this Realme could not haue certaine knowledge and perfit vnderſtanding of the Succeſsion, according to the true meaning and intent of the ſaid Acte of Parlament.

11. H. 4. *fol.* 72. 9. H. 6. *fol.* 24. 11. H. 6. *fol.* 15.

But to this matter ſome peraduenture would ſeeme to anſwere and ſay, that although at the time of the ſaid King Henries death, the Heires of the bodie of the ſaid Ladie Francis begotten, were vncertaine: yet at ſuche time, as the ſaid remainder ſhould happen to fal, the ſaid heires might

then

then certainly be knowen. In deede I wil not deny, but that peraduenture they might be then certainly knowen. But what great mischieffes and inconueniences might haue ensewed, and yet may, if the Wil take place vpon that peraduenture and vncertaine limitation: I would wishe all men well to note and consider.

It is not to be doubted, but that it might haue fortuned, at such time as the remainder shuld happē to fal to the said heires of the Ladie Frācis, the same Lady Frācis should then be also liuing: who, I pray you, then should haue had the Croune? Paraduēture ye wold say, the heires of the body of the Ladie Elenor, to whō the next remainder was apointed. Vndoubtedly that were cōtrarie to the meaning of the said supposed Wil: forsamuch as the remainder is therby limited vnto the heires of the body of the Ladie Elenour, only for default of issue of the Ladie Francis. Wherby it may be very plainly gathered vpō the said supposed Wil, that the meanig therof was not, that the childrē of the Lady Elenour should enioye the Croune, before the children of the Lady Francis. But what if the said Ladie Elenour had ben then also li-

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ning (which might haue happened, forasmuch as both the ſaid Ladie Frācis and Ladie Elenour, by common courſe of nature, might haue liued longer, then vntil this day) who then ſhould haue had the Croune? Truly the right Heyre (whome this ſuppoſed Wil meante to exclude) ſo long as there ſhould remaine any iſſue, either of the body of the ſaid Ladie Francis, or of the bodie of the ſaid Ladie Elenour lawfully begotten. And therefore quite contrarie to the meaning of the ſaid ſuppoſed Wil. Wherfore I doe verely thinke, that it would hardly ſinke into any reaſonable mans head, that had any experience of the great wiſdom and aduiſed doings of King Hēry the eight about other matters being of nothing like weight, that he would ſo ſlenderly and ſo vnaduiſedly diſpoſe the ſucceſsiō of the croune (whervpon the whole eſtate of this Realme doth depend) in ſuche wiſe, that they, to whom he meant to geue the ſame, by his wil could not enioye it by the lawe. Wherevpon ye may plainely ſee, not only the great vnlikelihod, that King Hēry the eight would make any ſuch Wil with ſuch ſlender aduiſe, but alſo, that by the limitation of the ſaid Will,

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the ſucceſsion of the Croune is made more vncertaine and doubtful, then it was before the making of the ſaid Actes of Parlament. Which is cõtrary to the meaning and intent of the ſaid Actes, and therfore without any ſufficient warrant in law.

But peraduenture ſome here wil ſay, that although theſe dangers and vncertainties might haue enſewed vpon the limitation of the ſaid wil: yet forasmuch as they haue not happened, neither be like to happẽ, they are therefore not to be ſpoken of. Yeas verely, it was not to be omitted. For although theſe things haue not happened, and therefore the more tolerable: yet forasmuch as they might haue happened, by the limitation of the ſaid ſuppoſed Wil cõtrary to the meaning of the ſaid Actes: the Wil can not by any meanes be ſaid to be made according to the meaning and intent of the makers of the ſaid ſtatutes. And therefore in that reſpect the ſaid Wil is inſufficient in lawe. And to aggrauate the matter farther, ye ſhal vnderſtand of great inconueniences and imminent dangers, which as yet are likely to enſue, if that ſuppoſed Wil ſhould take place.

It is not vnknowen, but that at the time of the

of the making of the ſaid Wil, the ſaid Ladie Francis had no iſſue male, but onely three daughters betwene her, and Henrie Duke of Suffolke. Afterward in the time of our late ſoueraigne Ladie Queene Marie, the ſaid Duke of Suffolke was attainted, and ſuffered accordingly. After whoſe death the ſaid Ladie Francis, to her great diſhonour and abaſing of her ſelfe, toke to huſbande one Adrian Stokes, who was before her ſeruant, a man of very meane eſtate and vocation, and had iſſue by him. Which iſſue (if it were a ſon, and be alſo yet liuing) by the wordes of the ſaid ſuppoſed Wil, is to inherite the Croune of this Realme, before the daughters betwene her and the ſaid late Duke of Suffolke begottē, which thing was neither intended, nor meant by the makers of the ſaid Actes. Who can with any reaſon or common ſenſe thinke, that al the ſtates of the Realme aſſembled together at the ſaid Parlament, did meane, to geue authoritie to King Henry the eight, by his Letters Patēts or laſt Wil to diſherit the Queene of Scotland lineally deſcended of the blood roial of this Realme, and to appoint the ſonne of Adrian Stokes, then a meane ſeruing man

of the Duke of Suffolks, to be King and Gouernour ouer this noble Realme of Englād. The inconueniences whereof, as also of the like that might haue followed of the pretesed Mariage of M. Keies the late Sergeante Porter, I referre to the graue consideratiõs and iudgementes of the honorable and worshipful of this Realme.

Some peraduenture wil say, that King Henry the eight meant by his Wil, to dispose the Croune vnto the Heires of the body of the said Ladie Francis by the said Duke lawfully begotten, and not vnto the heires by any other person to be begottē. Which meaning although it might very hardly be gathered vpon the said supposed Wil: yet can not the same be without as great inconueniences, as the other. For if the Croune should nowe remaine vnto the heires of the bodie of the said Ladie Francis by the said Duke begotten: then should it remaine vnto two daughters ioyntly, they both being termed and certainly accompted in law but one heire. And by that meanes the state and gouernment of this Realme should be changed from the auncient Monarchie, into the gouernement of many. For the Title of the

Ladie

Ladie Francis being by way of remainder, whiche is compted in law a ioynt purchaſe, doth make all the iſſue female inheritable a like, and cannot go according to the ancient law of a deſcét to the Croune: which is, that the Croune by deſcent muſt go to the eldeſt daughter only, as is aforeſaid. For great differéces be in law, where one cometh to any Title by deſcent, and where, as a purchaſer. And alſo if th'one of thoſe iſſues female dye, then were her heire in the Title, as a ſeueral tenant in tayle. And ſo there ſhould follow, that ſo many daughters, ſo many general Gouernors, and ſo might their iſſue, being heirs females, make the gouernmét grow infinite. Which thing was moſt farre from the meaning of the makers of that Acte of Parlamét.

What if the ſaid King had by his laſt Wil diſpoſed this realme into two or three parts, diuiding the gouernement thereof to three perſons, to rule as ſeueral Kinges: as for example, Wales vnto one, the Northe partes vnto an other, the South partes vnto the third, and by that meanes had miſerably rent this Realme into partes? Had this ben according to the entent and meaning of the ſaid Acte of Parlament? Or had it bene a good

and ſufficient limitation in law? No verily, I thinke no man of any reaſonable vnderſtanding wil ſo ſay. And no more can he either ſay, or thinke of the remainder limited vnto heires of the body of the ſaid Lady Francis by the ſaid ſuppoſed Wil.

Now to cõplete and finiſh this our Treatiſe touching the Queene of Scotlãds Title to the ſucceſsion of the Croune: as we haue done, ſo let vs freely and liberally graunt the Aduerſaries that, whiche is not true, that is, that the ſaid ſuppoſed Wil was ſigned with the Kings owne hand. Let the heires of the Lady Francis come forth in Gods name, and lay forth to the world their demãd and ſuppoſed right againſt the ſaid Q. of Scotlandes intereſt. The Quene on th'other ſide, to fortifie and ſtrẽgthen her claime, laieth forth to the open ſight of al the worlde her iuſt title and intereſt, ſigned, and alwaies afore this time allowed, not onely as with the Seales, but with the othes alſo of al the Kings, that euer wer in Englãd, takẽ at the time of their Coronation, for the cõtinuance of the lawes of this noble Realme of England, ſigned and allowed, I ſay, almoſt of al the world byſides: yea ſigned with God and natures owne fin-

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gers. Her right is as open, and as clere, as the bright Sonne. Now, to darken and ſhadow this glorious light: what doe the heires of the ſaid Ladie Francis, or others bring forth, to groũd their iuſt claime and demaũd vpõ? When al is done, they are faine to rũne and catche holde vpon King Henry the eightes written Wil, ſigned with his owne hande. Wel, let them take as good handfaſt thereon, as they can: but yet lette them ſhewe the ſaid Queene the ſaid original Wil. It is wel knowen, that they themſelues haue ſaid, that that to doe they can not. Yet let them at leaſt lay forth ſome authẽtical Record of the ſame. It is alſo notorious, that they can not. If then the foundation of their claime, being the Wil of ſuch a Prince, and of ſo late and freſh memorie made, neither the original, nor yet any good and worthy Record ſufficiently authoriſed, remaine of the ſame: by what colour wil they exclude the ſaide Queene? They muſt claime either by proximitie of blood, or by Charter. For the firſt, nature hath excluded them: Charter they haue none to ſhew.

They wil perchance crie out, and complain of the loſſe and imbeaſeling of the ſame

and ſay, that ſuch a caſualtie ſhould not deſtroye and extinguiſh their right. This were ſome thing perchance, if it were in a priuate mās caſe. It were ſomewhat, if their demaūd did not deſtroy the cōmon law, and the law of nature alſo. It were ſomewhat, if their ſuppoſed Charter were periſhed, or by any fraudulēt meanes intercepted by the ſaid Quene. Vpon whom in this point it is not poſsible, to faſten any the very leaſt ſiniſter ſuſpiciō. It were ſomewhat, if they did not aſpire to take gaine and lucre, or if the Queene ſought not to auoide dāmage. For dāmage it is, when any perſon is ſpoiled of any right due to him by law and reaſon. And there is a great oddes in the conſideration of the law and reaſon, betwene auācing our gaine (and gain we do that, that doth grow and accrew vnto vs by mere giſte or legacie, as doth the Croune, to theſe competitours and Heires of the Lady Francis) and eſchewing dāmage and loſſe. And loſſe the lawe accompteth to be, when we are defeated of our Aūceſtours inheritance. So that both being put in the indifferent balance of reaſon, lawe and conſciēce: the dāmage ſhal ouerweigh the mere lucre and gaine. Yea, I wil ſay more, that in caſe

Non eſt par ratio. lucra non capere, & damna ſentire. L. fin. C. de ed dicil. & L. Proculus ff. de damno infect. Inſti. de legat. Si res.

in caſe either the ſaied Queene of Scotlande, or any other were in poſſeſsion of the Croune, hauing no right to the ſame: yet if the iſſue of the Lady Francis had no farther, nor better right, then theſe pretended writings, the defendants cleauing to the only poſſeſsion, were ſalſe and ſure, and were not bound, to ſhew to them their Title. For it is a rule of the Lawe, that if the Plaintife faile in his prouffe, the Defendant ſhalbe diſcharged: yea, though he haue no better right, then bare and naked poſſeſsion. Neither could they any thing be releaued, though the pretenſed Record of the Chãcerie were yet extant, not for ſuch cauſes only, as we haue ſpecified, but for diuers other. For it may wel be doubted, though the ſaid Recorde might beare a ſufficient credit among the ſubiectes of this Realme, whether it may beare the ſame againſt one, that is no ſubiect.

L. qui accuſare C. de edendo §. commodum. Inſt. de indict.

Againe it is a rule, that the publike Inſtrument, making mention of an other, doth nothing proue againſt the partie, in reſpecte of any thing ſo mentioned, vnleſſe the original it ſelfe be producted. If therfore theſe cõpetitours haue loſt their inſtruments and Euidences, wherevpon they muſt of neceſsitie

L. ſi quis in aliquo documento C. de edendo.

build their demaund and Claime, to the exclusion of an other notorious right and Title: they must beare the discõmoditie therof, that sought thereby their lucratiue aduancement and commoditie, not the person, that demaũdeth nothing els, but that to him lawfully and orderly is due.

Yea, they, and we to, haue good cause to thinke, that this thing (in case any suche Wil were) is wonderfully wrought by Gods permission and prouidence. For it is almost incredible, to heare and beleeue, such kinde of writings (and in so great and weightie a matter, as this pretẽsed Wil compriseth) to be so sone extinguished, and perished, as it were, for special purpose, to preserue to this Noble Realme the true and sincere succesiõ of the next royal blood. Which if it should, by certaine (I can not tel what) interlined papers and scrolles be deriued and transferred to any other wrongfull heires: it would be a wonderfull and strange thing to the worlde to heare, and to importable to vs and our posteritie, to beare it. It wil then be so farre of, that that thing, whiche the Parlament most regarded in this Commission, shal by this pretẽsed Wil be produced and purchá-

ſed to this realm, as to haue a certain knowē vndoubted lawful Gouernour and King, to haue ſtriffe, contentions and diuiſiōs for the Croune cut away: that euen the very thing the Parlament moſt feared, is moſt vnfortunately and moſt lamentably like ſooneſt to chaunce. He that remembreth the tragical procedinges of the laſt, by name, and not by right, King Richarde, needeth not greatly to doubt, but that as he could find in his hart, to baſtard his eldeſt brother and lawful king, and to defame his own natural mother as an harlot: euen ſo now there wil ſome be foūd, that wil eaſely be enduced, for auācing and ſetting forth of their ſuppoſed right and Title to the Croune, to ſeeke meanes, to wring them out that ſhal wrōgfully ſit in the royal Throne, and to ſeeke to extort the Croune from their poſſeſsion.

Whiche vnhappy daye, if it ſhould once chance (as God forbid) then may we crie out, and ſing a woful and doleful ſong: then may we not without cauſe loke for the botomeleſſe Ocean ſea of infinite troubles, miſeries and miſchieffes to ouerwhelme the Realme. The which my mind and harte abhorreth to thinke vpon, and my penne in my hand trembleth to write thereof. *Finis.*

Hos libros à viris Catholicis, ijsq; eruditissimis lectos, & examinatos, intellecto ab ijsdem librorum argumento, vnà cum editionis necessarijs causis, iudicaui meritò edendos esse. Actum Louanij. 6. Martij. 1571.

Thomas Gozæus à Bellomonte, sacræ Theologiæ Professor, & authoritate Pontificis librorum approbator.

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